

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

**Eightieth Session
March 7, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:05 a.m. on Thursday, March 7, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1
Assemblyman Edgar Flores, Assembly District No. 28

Minutes ID: 402



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Nicholas Shepack, representing American Civil Liberties Union of Nevada
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Tonja Brown, Private Citizen, Carson City, Nevada
Zachary Kenney-Santiwan, Volunteer, Mass Liberation Project Nevada
Erika Castro, Organizing Manager, Progressive Leadership Alliance of Nevada
Zachary Khan, Campus Organizer, Nevada Student Power
Phuong Tran, Fellow, Nevada Student Power
Mya Yazbek, Fellow, Nevada Student Power
Edward Coleman, Private Citizen, Reno, Nevada
Carter Bundy, representing American Federation of State, County and Municipal Employees
Craig Caples, Vice President, Nevada-CURE
Jill K. DeStefano, President, Protectors of Tule Springs
Stephen M. Rowland, Ph.D., Professor, Geoscience Department, University of Nevada, Las Vegas
Anita Wood, Board Member, Protectors of Tule Springs
Marla McDade Williams, representing Reno-Sparks Indian Colony
Michon R. Eben, Cultural Resources Manager, Tribal Historic Preservation Office, Reno-Sparks Indian Colony
Kyle J. Davis, representing Nevada Conservation League
Chaunsey Chau-Duong, representing Las Vegas Valley Water District Springs Reserve
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Michael Gomez, Detective, Financial Crimes, Las Vegas Metropolitan Police Department
John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce
Andy Peterson, Vice President, Government Affairs, Retail Association of Nevada

Chairman Yeager:

[Roll was called, and Committee protocol was explained.] We have three bills on our agenda today, and we will be taking the bills out of order this morning. We will start with Assembly Bill 183 and then we will take the next two in order on the agenda. At this time, I will formally open the hearing on Assembly Bill 183, which prohibits certain correctional services from being provided by private entities. We have Assemblywoman Daniele Monroe-Moreno to present the bill this morning.

Assembly Bill 183: Prohibiting certain correctional services from being provided by private entities. (BDR 16-290)

Assemblywoman Monroe-Moreno, Assembly District No. 1:

Good morning, Chairman Yeager and Assembly Judiciary Committee. Joining me at the table today is Nicholas Shepack with the American Civil Liberties Union of Nevada. We are here this morning to present Assembly Bill 183, which would require the core correctional services be provided only by state or local government and would ban private corporations from running our state and local jails, prisons, and detention facilities as well as stop the movement of Nevada's prisoners to out-of-state facilities by the year 2022 (Exhibit C). On the bill before you it states 2024, but I will explain later regarding that amendment.

Currently, Nevada has no state or local privately run jail or prison facilities. However, we once did and with negative consequences. We had to take over those facilities that were run by private industries. Therefore, A.B. 183 will not close any facilities that are currently operating within our state. It has no negative effect on any Nevada businesses. And, it also would not affect the operation of the federal prison facility because we do not have authorization to legislate over that facility.

Section 2 of the bill would require state and local jails, prisons, and detention facilities that house prisoners to be under the direct oversight of the state of Nevada or a local government. These core correctional services would be performed by employees of the state or local government. Section 2 also prohibits the performance of core correctional services by private entities. Much of this may sound familiar to some of you. This is because we, as a body, heard a version of this bill last legislative session. Assembly Bill 303 of the 79th Session was passed in the Assembly with a vote of 38 to 3. The bill also passed in the Senate with a vote of 12 to 8. Unfortunately, A.B. 303 of the 79th Session was vetoed by the Governor in large part due to concerns that Nevada may have to utilize private prisons to deal with its growing prison population.

It has now been two years since A.B. 303 of the 79th Session passed and was vetoed. The state has not had to use any new entities to house our inmates. During the 2017 Session, we heard testimony of concerns with overcrowding in our prisons, and as a former corrections officer, that concerned me. We heard testimony from the prison that we had inmates sleeping in "boats" on floors, which meant that corrections officers were put in a compromised position of having to manage the inmates that were in regular beds in housing

units but also having to step over inmates on floors. It was not a safe condition for the inmates; it was not a safe condition for the officers working within those facilities.

We, as a body, made a decision that we would allow the prison system to do what it needed to do and retrofit two buildings to make them more accommodating for our inmate population. To do that, we agreed to move 200 inmates out of our state and use a private facility. We gave them a sunset window of five years. The reason we gave them a five-year sunset was because the construction industry said it would take approximately four years to complete the construction. My father, after serving in the military, worked in construction and I know that oftentimes construction does not always come in on time. So as a state we did what was responsible and we gave them the additional year.

I am happy to report today that one of the facilities is operational, and we will be taking back 100 of those inmates by the end of July of this year. We are two years into the original five-year agreement. I see that if we continue with this progression, we will be able to bring these inmates back before the final three years of our original agreement.

I worked closely with Director James Dzurenda [Department of Corrections] in 2017 to create A.B. 303 of the 79th Session. I have also been in discussion with Director Dzurenda this year in asking if he needed to continue the use of the private prisons. Of course, he would still like to have that tool in his toolbox. However, according to the Nevada Department of Corrections' budget, it costs us \$22,171 to house an inmate within our facilities on an annual basis. But it costs us \$29,923 to house an inmate in an out-of-state facility. That is a difference of \$7,752 per inmate per year.

While I understand that there is a business plan to house inmates, the state of Nevada was in that business. In 2004 we realized that was a mistake. We had two facilities within our state that were manned by a private industry—one was a juvenile facility and one was a women's facility that we are currently operating ourselves. In the women's facility we had a female inmate who was impregnated by one of the private industry guards. There were other horror stories in the juvenile facility that the private industry was managing. I am not asking to close down a business. We do not have it here.

What I am asking is, as a state and as elected officials and as responsible citizens, is it our job simply to put people who commit crimes in jail and leave them there simply to have them off the street? Or is it our job, as elected officials, to make sure that the people who come into our jail facilities and the people who work in our prison facilities work in safe, humane facilities? We should do what a jail is supposed to do, and that is address the crime that put someone there but also try to make sure that the person we let back out into society is a better person than the one who went into the jail. We should be addressing behavioral health care issues and programming that perhaps that person was not able to have when they were out in society and that may have led them to go to jail. I know from personal experience not every inmate in jail is a bad person; they may have done a bad thing, but they are not a bad person. There are issues and situations that may have gone unaddressed before they came into the criminal justice system. We have a responsibility that for the person we put back on the

streets, we have made every attempt to give them the programming that they need, the life skills that they need, and job training that they can get while they are in jail so they can be a better and productive member of society. I could tell you all the horror stories of prison systems, but that is not why I am here today.

I am here today to say, what A.B. 183 does is say we have learned from our mistakes and, once and for all, we do not want private jail facilities in the state of Nevada. I will turn it over to Mr. Shepack.

Nicholas Shepack, representing American Civil Liberties Union of Nevada:

Thank you, Mr. Chairman and Committee members, for having me here today. We echo all of the sentiments of Assemblywoman Monroe-Moreno, and we want to say that this body and this Committee, in particular, has the great responsibility of creating many of the laws that govern who enters our prison system and how long they will be there. A major part of that responsibility is oversight. What we have seen in states that allow private prisons to operate within their borders is a major lack of oversight. It becomes extremely difficult for legislative bodies to have oversight. It becomes difficult for government entities, and it becomes difficult for third-party entities, such as ourselves, to find out what is actually going on in these facilities. For that reason, we believe private facilities should not be used within the state of Nevada.

Many will say that it is a cost-effective alternative. As Assemblywoman Monroe-Moreno stated, to send someone to another facility out of state is not cost-effective. But we also must ask ourselves, What is the true cost of allowing a system to operate within our borders that profits from high recidivism rates and high crime rates? I do not know if that cost can be measured in dollars.

We will all know somebody who enters the criminal justice system—be it a friend, family member, or colleague—and we expect them to have the services they need once they enter into that system. There is no incentive for a private system to provide top-notch care as it is expensive. There is no incentive for a private system to provide care that allows reentry to be successful because an inmate returning into the system is a customer who is dollars into the pocket of that private industry.

Private prisons also are notorious for underpaying their staff, offering little to no benefit packages for their correctional officers and other staff, including mental health staff, resulting in extremely high turnover in the states where we see private prisons. This high turnover leads to extremely dangerous situations both for correctional officers and for the inmates inside our prisons. As Nevadans, we should demand the highest levels of safety for both our inmates and our correctional officers.

The Nevada prison system is not perfect, we all know this, and we are working hard—and I see it in this Committee all the time—to make it a better system. But we firmly believe that state and local governments are the best equipped and should be held solely responsible for

holding Nevada's inmates. We agree that the sunset period is necessary, and we fully support this bill. We are urging you to do the same.

Assemblywoman Monroe-Moreno:

As I stated, I had a conversation with Director Dzurenda yesterday concerning this bill. I have yet to have a bill that comes out of the Legislative Counsel Bureau that does not need just a few modifications. There was a concern from the community that it was too broad as to who could be sent out of state. So in conversations with Director Dzurenda, section 3, subsection 3, paragraph (a) will read something to the effect of, The Department must give first priority for any such transfer of a prisoner who is: 1) not a permanent resident of the state of Nevada; 2) identified and/or verified gang leader, recruiter, or gang extorter; and 3) involved in a violent activity within the past 12 months. There was concern from citizens within our community that it was broad and there were complaints that wardens were giving a list of names of people that they just did not get along with in their prisons and having those persons sent out of state. It was agreed with Director Dzurenda that we would make it more specific as to who would be sent out.

In section 7, as I stated in my opening, the original sunset was at five years and we are two years into that sunset. We agreed that it was in the best interests of everyone to stay within that five years, so the sunset date will go back to 2022. With that, I will accept any questions.

Chairman Yeager:

Thank you, Assemblywoman Monroe-Moreno, for being here to present the bill this morning.

Assemblywoman Cohen:

In section 3, subsection 3, paragraph (b) where reference is made to videoconferencing, is there any privacy that inmates get if they are doing videoconferencing?

Assemblywoman Monroe-Moreno:

I have not personally visited the Arizona facility where our inmates are being housed. However, I can tell you that in the facility I worked in, there was privacy. It was just like visitation. You could be on the phone and have the person you are visiting with on a television screen and the other inmates were not allowed to see it because there were things blocking the screen. I cannot testify to how it has been done in the Eloy detention facility in Arizona. There may be someone in the room from the private prison facility that we are utilizing or their lobbyist that could explain in more detail.

Assemblywoman Cohen:

If one of our inmates is out of state in a private prison and having a problem with a correctional officer or just a problem in general, do they make their complaints back to Nevada? Do they know how to do that? What is that process?

Assemblywoman Monroe-Moreno:

The inmate can file a grievance in that facility. The inmate can also forward that grievance back here to Nevada. A number of inmates have sent letters to me expressing their issues, concerns, and grievances.

Assemblyman Daly:

I just want to say that I am with you. I am opposed to privatization on virtually everything except construction. It is a fact. You do lose control of all of those things. If you want those agencies to be responsive, they need to be under the control of state employees. I agree with you on that. With section 3, we are allowing for at least two more years instead of four, if I heard you correctly, for some limited possibilities for contracting to out-of-state prisons. Does that apply to just state prisons or local jails as well? My understanding is just state prisons, but I just wanted to make sure.

Assemblywoman Monroe-Moreno:

The contract that we entered into as the State of Nevada was a five-year contract and that is just for our state prison inmates. The bill itself addresses state and local jails as well. It was much to my dismay that the City of North Las Vegas had expressed interest to reopen their jail facility with a private industry. So I included local jail facilities in this bill.

Assemblyman Daly:

That would be excluded for local governments as well, which is what I wanted to make sure happens. We are going to stay within that five-year contract, so the 2024 date in section 7 is going to change to 2022?

Assemblywoman Monroe-Moreno:

That is correct. There is the Interstate Compact for Adult Offender Supervision (Interstate Compact) that law enforcement has to have. It is a necessity that we have that. There are times that someone is arrested who committed a crime. For their safety and the safety of other inmates, they cannot stay in our state. They could be a person in law enforcement or they could be a political official who got arrested and had to do time in jail. We have the Interstate Compact contained in another section of the *Nevada Revised Statutes* that I would not in any way interfere with. It is a tool that law enforcement has to maintain, and that would allow us to move our inmates out of state—usually to a state-run facility. In addition, for other states finding themselves in the same situation, they can utilize our facilities through the Interstate Compact.

Assemblyman Daly:

But in other words, it is very limited and only as necessary. I understand.

Assemblywoman Krasner:

Currently, we are able to use state-maintained jails and prisons to house inmates, but if Director Dzurenda determines that there is an especially violent prisoner, he can now make the determination that it is in the best interests of the guards, other staff, and prisoners to

move that prisoner to a different prison out of state that might be privately owned. Is that correct?

Assemblywoman Monroe-Moreno:

Yes, that is correct.

Assemblywoman Krasner:

This bill would take that option away from him, is that correct?

Assemblywoman Monroe-Moreno:

No, that option is still there. The option is there until the end of 2022 to use a private facility if this bill passes. The prison director will always maintain the option to move an inmate out of his prison facility that is a danger to his prison facility by utilizing the Interstate Compact.

Assemblywoman Krasner:

In three years, in 2022, what does he no longer have the option of doing?

Assemblywoman Monroe-Moreno:

He will no longer have the option of utilizing a privately owned facility.

Assemblywoman Krasner:

You said that when you spoke to him he said he would like to keep that option in his toolbox for certain instances, and he also made that comment on the interim Advisory Commission on the Administration of Justice. Why do you want to take that option away?

Assemblywoman Monroe-Moreno:

I want to take that option away because a private prison's bottom line is a profit margin. It is not thinking of the best interests of the inmate or the state that that inmate came from. Having the Interstate Compact gives Director Dzurenda the same options that he would have, but that inmate would be sent to a state-run facility that is operated by Nevada Commission on Peace Officers' Standards and Training (POST)-certified employees. So the Director does have that option and in my conversation with him yesterday, we are utilizing that option. There is one state that actually owes us more beds because we have not sent inmates there, but they have sent a number of their inmates to us. So the option is still there for him to send inmates out, just not utilizing a profit margin system.

Assemblywoman Krasner:

So you are taking away the option for Director Dzurenda to utilize a non-state-owned prison if he needs to transfer a violent prisoner?

Assemblywoman Monroe-Moreno:

Correct.

Assemblywoman Tolles:

The dialogue has answered some of my questions, but it did generate some other thoughts about possible circumstances where using that option would be beneficial in the future. Perhaps if we take a look overall at our practices and think in new ways about reform and engaging with individuals. In the future there may be innovative solutions, a facility that can take a new approach, perhaps a smaller, private provider could offer some services and some ways to approach the inmate population in a way that is creative. We might be blocking that ability to partner in a way with some creative and innovative approaches as we are rethinking things. I just wonder if that has ever come up. Are we possibly limiting the ability to engage in that type of partnership with someone down the road? If there was some sort of emergency where a facility needed to be shut down due to a natural disaster, and while we restore that facility, would Director Dzurenda be able to utilize a private facility? I am looking at other circumstances other than just an individual where a whole building might need to be transferred to a private facility.

Assemblywoman Monroe-Moreno:

In corrections, as in any other industry, as we evolve as people, new ideas come along; but as those new ideas and innovative ways to interact with inmates, treat inmates, and engage in programming come along, the state has a responsibility to play a role in that. I believe it is our responsibility to bring those innovative ideas within our state prisons, not necessarily by partnering with or employing the use of a private facility. Now if there is a private entity that has a state-of-the-art drug rehabilitation program that they want to come into our state and work with our staff so that our inmates could benefit from that, that would be wonderful. Oftentimes the medical facilities, the culinary facilities, and the laundry facilities are not operated by the state themselves, but they contract those out. If that were to happen, that is still an option for the prison because that is not the core correctional functions of what a corrections officer or the prison itself does.

Now, in an emergency situation, we would have to do emergency planning. I am sure without divulging what the prisons' emergency system is, I would assume they have a plan in place for that type of situation. I would hope that that plan did not write out that they would utilize a private prison, but they would have a backup plan for utilizing facilities that are within our state whether they are city or county facilities or utilizing other state-run prisons that we already have compacts with.

Assemblyman Roberts:

I think you covered a lot of what I was going to ask about an emergency standpoint. At the Clark County Detention Center, we rehabbed a whole tower and we did not use any private prisons to handle our overflow of prisoners. So if they try every effort to contract with other state facilities or local facilities but due to the volume being too much, would this prohibit the prison from using private facilities? Would you be acceptable to, under a rare emergency situation, that that might be acceptable? I understand that we are sunseting this for two years for a similar situation where they are rehabbing a facility. Would you entertain something to that effect, maybe even define something to give Director Dzurenda as to the ability to have that option?

Assemblywoman Monroe-Moreno:

Yes, Clark County Detention Center, in their rehabbing, utilized the City of North Las Vegas to move their inmates. I would listen to the discussion, but I would think an emergency situation that you described would be better suited as a decision of the Governor and not the director of prisons. If we were in a situation where there was an earthquake or a fire at the prison and the decision had to be made to move inmates out with no option of another state facility, I think that is a decision that would be better suited in the hands of our Governor.

Assemblyman Roberts:

The Governor has the ability to declare an emergency and override state statute?

Chairman Yeager:

I believe that is correct.

Assemblyman Edwards:

I would actually like to start out by saying that I have learned more about the prisons in the past 5 years than I had in the previous 45 years. Some of it actually has been pretty good. I have worked with the staff at several of the prisons to actually start a program for the veterans in prison in order to help them. I have seen that they have some really good talent if they would use it in the most positive ways they could. Director Dzurenda has initiated several programs that I think are fantastic that will give the prisoners opportunities when they get out to be on the straight and narrow and be able to be self-sufficient. I think there are some things that have been going very well, and I know the Director is trying a lot of innovative things to make things even better. I would also add that the ship's wheel I have in my office was made at prison industries, and they did a phenomenal job. Everyone who has looked at it says it is awesome, and it is.

I agree that they do great things here and the prisoners should actually be feeling a little bit lucky to be in our prisons. However, I do want to point out a couple of things and get to a question. When we talk about private prisons having high turnover, we have high turnover here in our own state prisons. Not only do we have high turnover, we have a 14 percent vacancy rate which is detrimental to both the guards and the prisoners. We have had overcrowding for the past five years and nobody seems to be able to come up with a game plan to actually alleviate that. So when it comes to managing the prisons, to say that the private folks cannot do it but the state can, there is unfortunately too much evidence to the contrary.

When we had the economic downturn, programs were shut down because they just could not do things. That is no different than what the private sector faces as well. The other aspect with a private prison is if you do the contract correctly, you can, in fact, make sure that the prisoners are well taken care of and that becomes a simple thing of oversight of the prisons themselves and how the prisoners are treated. That is a contract issue, and you actually have more control over that contract than sometimes our own laws would allow. I think it is false to say that a private prison cannot treat our prisoners well. When it comes to the idea of shutting off that opportunity, I think that is a mistake. Not just for the instance of a natural

disaster, but we had a situation where one of the prisons had to be shut down because it had some kind of maintenance problem that took away the ability to use the prison. In that case, the Director needed to have some kind of a safety valve to send the prisoners somewhere else for their own safety and for the safety of the guards.

Now when it comes to taking care of our staff, I have a big bone to pick with the state because in talking with the staff, some of our prison guards are only making \$350 a week take-home pay. I have no idea how they live on that. The question really comes down to why are we so opposed to using private prisons when they can do sometimes better than our own prisons? If you write the contract well enough, they can actually provide services better, especially when you have cases where it is in the interests of the prisoners to not be in the state?

Assemblywoman Monroe-Moreno:

I applaud you in stating the obvious that the state correctional officers as well as a number of state employees are vastly underpaid. I will be happy to have you sign on to a pay parity bill that I have to increase the pay of our state public safety officials. Thank you for that.

Assemblyman Edwards:

I would love to have you sign on to my bill to give them a \$10,000 pay raise.

Assemblywoman Monroe-Moreno:

Yes, and collective bargaining as well, but that is another subject matter. I will agree with you that Director Dzurenda has done a phenomenal job in bringing programming in, and the prison system now is working with over 48 nonprofit community organizations to do programming for our inmates. We are going down that road to make improvements. So yes, we do have a high turnover because we, as a state, have not given the state correctional officers the resources they need. But we can change that this legislative session, just like we can outlaw private prisons in the state this legislative session. We can accomplish both of those. The money that we are spending on the contract for the for-profit prisons costs us more than what it costs to run the prisons here within our state. If we utilize that difference of funding, we could do those other programs that you talk about right here instead of paying for an out-of-state private prison. We could utilize that funding here to do even more programming within our state prisons and to fund the salary increases of the corrections officers. If we do that, we will have less of a turnover with our Nevada POST-trained employees.

Assemblyman Edwards:

That is my hope that that would result. But what I would like to simply point out is, if it does not work out that way, why would we possibly take away options from the state government to use other resources?

Assemblywoman Monroe-Moreno:

As legislators, we can ensure that it works out that way by voting for those changes on those bills that are coming up this legislative session.

Assemblyman Edwards:

I would hope so, but as the Zen master said, We'll see.

Chairman Yeager:

Do we have any further questions from Committee members? [There were none.] I will now open it up for testimony in support of A.B. 183 either in Las Vegas or Carson City.

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

We are in support of this measure and thank Assemblywoman Monroe-Moreno for bringing this bill forward.

Tonja Brown, Private Citizen, Carson City, Nevada:

We support this bill. I would like to touch on a couple of things that did not get mentioned. The first is the hardship that the family goes through when a loved one is transferred to an out-of-state institution. This part touches home. We were talking about private sectors and the risk of those going to other private sectors. My family was personally affected by someone who was transferred to a private out-of-state prison and was impregnated. She had to give up her baby and spend a few more years incarcerated. I am not in favor of sending our inmates to private prisons. I do agree that the videoconferencing would be wonderful for the family members to be able to interact with their loved ones. I think it would relieve a lot of stress on the families and the inmates.

Zachary Kenney-Santiwan, Volunteer, Mass Liberation Project Nevada:

As a country and as a state, we want to uphold principles of liberty and freedom. We cannot allow people to profit from the elimination of said liberty and freedom. People who advocate for privatization like to talk about cutting costs, but according to the American Civil Liberties Union, the fact remains that the evidence for that is mixed at best. At the end of the day, if we really want to reduce prison sizes or reduce the costs of our incarceration rates, we should focus on lowering incarceration rates, not handing prisoners over to individuals who profit directly from keeping people in prison. That is the main point that I want to highlight, the fact that we can argue all day about efficiency, guard turnover rates, safety conditions, and how effectively these places are run, but the fact remains that the existence of an industry that has a direct incentive to keep people going to prison will always be an obstacle to decreasing incarceration rates and keeping people with their families and restoring them to society so they can live out their lives freely and enjoyably.

Erika Castro, Organizing Manager, Progressive Leadership Alliance of Nevada:

We want to thank Assemblywoman Monroe-Moreno for bringing this issue up again and express our full support behind this bill. Private prisons have led to mass incarceration as an already billion-dollar industry. It stands to make more money when more people are being sent to their facilities. Evidence has shown that a focus on profit rather than reducing recidivism leads to cutting corners and other costs such as facilities maintenance, training, and employee pay. Private prisons have also been shown to pick and choose inmates that they take because they know that it would be less expensive for them to house them. This

leaves our state facilities with inmates whose needs cost higher. Those cost-cutting measures are not to benefit the state, but to benefit the shareholders of these private prisons. We need to ensure that our tax dollars never go to the pockets of private prison chief operating officers and we need to support A.B. 183.

Zachary Khan, Campus Organizer, Nevada Student Power:

I am here today in support of A.B. 183. While the nation's unprecedented rate of imprisonment deprives individuals of freedom, wrests loved ones from their families, and drains resources from governments, communities and taxpayers, the private prison industry reaps lucrative rewards. As the public good suffers from mass incarceration, private prison companies obtain more and more government dollars and private prison executives at the leading companies rake in enormous compensation packages. Private prisons essentially admit that their business model depends on locking more and more people up. The American economy should not include locking people in cages for profit. Just as a statistic to share with you, inmates in private prisons can cost taxpayers up to \$1,600 more per year, so it is not exactly cutting costs. According to the Justice Policy Institute, private prisons now rake in a combined \$3.3 billion annually and private federal prison populations have more than doubled between the years 2000 and 2010.

Phuong Tran, Fellow, Nevada Student Power:

Earlier, Assemblyman Edwards, you talked about the problems of vacancy rates in the private prisons. The Justice Policy Institute found private prison groups like The GEO Group and Corrections Corporation of America [CoreCivic] spent millions on lobbying and campaigns leading to harsher sentencing laws and more funding to private prisons. In 2011, Arizona had to pay a private prison \$3 million because 97 percent of its inmate quota had not been met. Given the corrupt and deceitful nature of private prisons, Nevada should make the right decision and ban private prisons before they become a problem like they have in other states. While government prisons are not always offering the best conditions for their inmates, private prisons cannot be the answer and are oftentimes doing more harm than good for inmates, their families, and taxpayers.

Assemblyman Edwards:

I think you misunderstood what I was talking about with the vacancy rate. It is not a vacancy of prisoners, it is a vacancy rate of prison guards. I am talking about the prison guards which are down 14 percent of what their authorization number is.

Mya Yazbek, Fellow, Nevada Student Power:

Assemblyman Edwards, I am glad that you brought up a quota that is not being met with regard to staffing because private prisons actually have high rates of being understaffed which leads to higher rates of violence in private prisons. A study from the University of Wisconsin found that private prisons hand out twice as many infractions, which leads to lengthening prisoners' sentences with no evidence of less recidivism. Also, health care in private prisons has brought shortages of staff, unsafe conditions, and lawsuits. Looking at the facts, it is hard to deny that private prisons cost more to taxpayers and harm rehabilitation efforts. In addition, they can also trap local and state governments into contracts that will

require more prisoners to be locked up for longer periods of time. Finally, instead of utilizing the massive amount of profits that these prisons are getting to better the conditions for their inmates and try to have an emphasis on quality care or rehabilitation, private prisons are actually using their money to fund campaigns and lobby Congress, which I am sure our state will see if we allow private prisons to enter Nevada.

Edward Coleman, Private Citizen, Reno, Nevada:

I am advocating for the passage of A.B. 183. Currently, the State of Nevada has a contract with CoreCivic to house 200 of our inmates. I would like to use my testimony to paint a clear picture of CoreCivic and the for-profit prison industry in general. In 2015, Corrections Corporation of America became CoreCivic in the face of sustained pressure from numerous lawsuits. Data suggests they were facing more than 1,200 federal lawsuits between 2010 and 2015 that included sexual harassment, deaths, sexual assault, use of force, physical assault, employee/work-related, inadequate medical care, injuries, and civil rights concerning prison conditions. CoreCivic listed the following in its Form 10-K annual report to the United States Securities and Exchange Commission: "The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them." Based on its actions, CoreCivic seems to be more focused on their bottom line.

CoreCivic has been the focus of numerous investigations and lawsuits as well. In 2006, government investigators found the medical care provided at one of their facilities was so poor it jeopardized the lives of detainees. In 2013, CoreCivic confirmed that it falsified records involving 4,800 employee hours and was later found to be in contempt of court. One of their facilities was so violent, it was dubbed "gladiator school." Finally, in July 2017, federal lawsuits were brought against CoreCivic after the corporation failed to adequately respond to a widespread scabies outbreak. CoreCivic has a documented history of lawsuits and investigations which demonstrates the company's willingness to cut vital resources and participate in fraudulent activities.

CoreCivic has also engaged in questionable lobbying. Between 2002 and 2012, it is estimated that CoreCivic spent \$17.4 million, including \$1.9 million in campaign contributions, lobbying both houses of Congress, the Department of Homeland Security, and numerous other federal agencies. From 2006 through 2008, CoreCivic is estimated to have spent \$2.7 million lobbying for stricter criminal laws and mandatory sentencing terms. CoreCivic has advocated for laws that would increase demand for its services. Beginning in 2016, CoreCivic began to expand its control over state and local prisons, and per a memorandum sent out in 2016, states were required to maintain occupancy in these prisons at 90 percent. CoreCivic has made it clear that their only interest is in preserving their bottom line, and they appear to be willing to take almost any steps necessary to do this. The citizens of Nevada have empowered you all, among other things, to be stewards of their public trust. Please do the right thing with that trust and vote to pass A.B. 183.

Carter Bundy, representing American Federation of State, County and Municipal Employees:

We represent correctional officers all over the state, and we stand in strong support of A.B. 183. We would like to thank the sponsor for bringing it forward.

Chairman Yeager:

Is there anyone else in support of A.B. 183? [There was no one.] I will now open it up for opposition testimony on A.B. 183 either in Carson City or Las Vegas.

Craig Caples, Vice President, Nevada-CURE:

Our organization is dedicated to judicial reform and helping prisoners transition back into society. I am here to oppose A.B. 183 and any correctional services being performed by private entities for profit in human holding facilities ([Exhibit D](#)). I am confused, however, as most everyone who has spoken in public comment so far has pretty much opposed these private facilities and yet, in section 3 of this bill they specifically talk about entering into a contract which would basically continue this cycle going forward and allowing Director Dzurenda to enter into contracts again. We were under the understanding that this was a two-year contract and that they were going to start shipping people back from Arizona sometime in July. This is a little confusing—this whole situation where it gives them additional contract possibilities, and yet everybody seems to be opposed to private contracting. If this is about removing problem prisoners, I have spoken with Director Dzurenda in the past and his whole thing about dealing with Arizona was to be able to get the majority of the bad apples over there and isolate them from the other people. We think that Ely State Prison is probably a better situation for that, and the Department of Corrections could actually designate a unit or units in the Ely facility and curtail their communications at that facility; or if the prison system is overcrowded, which it is, to avoid building another prison facility, rather than a transfer of prisoners to private facilities, make parole mandatory upon eligibility or find other means to release prisoners from the Department of Corrections. Reducing prison population and ending the era of mass incarceration should be the goal of this Legislature. At any rate, our organization adamantly opposes the housing of any Nevada prisoners or transferring them out of state in any private prison or correctional facility and any buildings, rentals, or leases in such facilities in the state of Nevada, and we hope this Legislature will not pass any legislation authorizing the transfer of any prisoners to private prisons or correctional facilities. Thank you for your time and consideration.

Chairman Yeager:

Thank you, sir, and I might be able to make a point of clarification because it sounds like you might actually be in support of the bill. You referenced section 3 of the bill which does provide for the ability to contract and send prisoners out of state to private prisons; but if you look down at section 7 of the bill, what that says is that section 3 actually expires in 2024 but the sponsor of the bill has indicated that she would like to move that to 2022. Section 3 of the bill is simply accommodating the fact that we have some of our prisoners in out-of-state private prisons right now, but if this bill passes, the ability to do that would be eliminated by the year 2022 so it would no longer be a possibility. I wanted to make that clarification and

ask if that changes your testimony to in support of the bill realizing that is what the bill is intending to do.

Craig Caples:

Actually I would like to move the clock back about two years if at all possible and get it so this never passed to begin with. I do not really think that having moved those people to Arizona was an advantageous thing to begin with. We have specific documentation where we have found that inmates have been sent over there more for retaliation and retribution and having crossed correctional officers than the initial purpose. We have specific examples of that. It is all fine and good that they moved that to 2022, but even at that, we really are opposed to having anybody moved out of state for any reason at all. That is our stand on that situation, so whether that is a true opposition or in favor partially, I am not exactly sure how you would want to look at it. But I think the short and long of it is, the majority of the people who have spoken during public comment are adamantly opposed to using private for-profit prisons.

Chairman Yeager:

Thank you for the clarification, sir. We will technically mark you as opposed under our Assembly rules, but it sounds like you are in support of the policy behind the bill. You would just like it to be effective immediately. I think technically that is opposition under the Committee rules, but thank you for providing your testimony this morning.

Do we have anyone else in opposition to A.B. 183? [There was no one.] Do we have anyone in neutral to A.B. 183? [There was no one.]

Assemblywoman Monroe-Moreno:

Thank you, Chairman Yeager and Committee members, for hearing A.B. 183. As a retired corrections officer, I have seen firsthand the need for improved services and reforms in our criminal justice system. Outlawing for-profit prisons once and for all will establish a criminal justice system of equity, integrity, fairness, and a system that views prisoners as people instead of profit margins. I would like to also take this opportunity to thank all of you who voted in favor of this bill in 2017 when it was A.B. 303 of the 79th Session, and that includes you, Assemblyman Edwards. I hope to have your support again.

[Letters in support of A.B. 183 from Nicole D. Porter of The Sentencing Project ([Exhibit E](#)) and from Ashley Daftary, Ph.D., University of Nevada, Reno ([Exhibit F](#)) were submitted but not mentioned and will become part of the record.]

Chairman Yeager:

I will close the hearing on Assembly Bill 183. At this time, I will open the hearing on Assembly Bill 152, which revises provisions relating to cultural resources. Welcome back to the table for the second presentation, Assemblywoman Monroe-Moreno.

Assembly Bill 152: Revises provisions relating to cultural resources. (BDR 33-868)

Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1:

Thank you for hearing Assembly Bill 152. It is a bill that is near and dear to my heart because the Ice Age Fossils State Park is literally in my backyard. Assembly Bill 152 is a bill that revises provisions related to our cultural resources—in particular the Ice Age Fossils State Park. Assembly Bill 152 would make the penalties for disturbing, destroying, or selling the paleontological and cultural resources in the state park consistent with those of the surrounding Tule Springs Fossil Beds National Monument, both of which are within walking distance from my backyard. For those of you who have not had the opportunity to experience the wonders of the jewel which resides in our community, I will share with you a little foundation of why this park and its historical contents are so important for this and future generations.

The Ice Age Fossils State Park is one of Nevada's newest state parks. It was designated in 2018 and it sits on 315 acres in North Las Vegas, bordering the City of Las Vegas just north of Decatur Boulevard. It sits between my district and Assembly District No. 13. It remains rich in fossils and shells from the ice age period. It was home to the 1962-1963 "Big Dig," which was at that time the largest scientific exhibition that included researchers from five renowned institutions. With the hard work and dedication of the team for the Protectors of Tule Springs, their volunteers, and state park officials, the state park visitor center is set to open in the fall of this year.

The fossils found on this land display a huge assembly of animals dating back between 7,000 and 300,000 years when Columbian mammoths, camels, saber-toothed cats, giant sloths, and others walked the valleys of Las Vegas. The new park is literally a few yards from housing developments, schools, and shopping centers. The close proximity to those makes it more likely that fossil hunters could be a problem. Selling the mammoth tusks, teeth, and other animal skulls has become a lucrative black market. The new state park, as I stated, is adjacent on three sides to the National Park Service of the U.S. Department of the Interior which manages the Tule Springs Fossil Beds National Monument. The 2009 Paleontological Resources Preservation Act (PRPA) created penalties for disturbing, destroying, or selling a paleontological and cultural resource on federal land. These penalties result in felony convictions and fines up to \$5,000 and/or the cost of restoration of the site.

Due to the very low consequences for fossil site destruction and theft at the state level—which is currently a misdemeanor and only a \$1,000 fine—the state park has been and will continue to be in greater danger of fossil theft and destruction. What A.B. 152 does is establish laws that make it a crime for a person to knowingly and willfully remove, mutilate, deface, evacuate, injure, or destroy a historical or prehistoric site or resource on state land; or to receive, traffic in, or sell cultural property appropriated from state land without a valid permit. Assembly Bill 152 would make the penalties on the state park consistent with the surrounding national park.

Section 1 of the bill will increase the penalties for the first offense, if the sum of the value and restoration is not more than \$500—which is currently a misdemeanor—to a category E felony, punishable with a minimum of 1 year but not more than 2 years, or a fine of not more than \$5,000, or both fine and imprisonment. If the sum of the value of damage or theft and restoration is more than \$500, it would now classify it as a category C felony, punishable with a minimum of 1 year but not more than 5 years, or a fine of not more than \$10,000 or both. Subsequently, a second offense—which is currently a gross misdemeanor—would take it to a category C felony for theft or destruction of \$500 or less with a minimum not less than 1 year and not more than 4 years, or a \$5,000 fine, or both.

The changes in A.B. 152 do not create a new crime. It is already a crime in the state of Nevada, but it makes the crime consistent with what is happening on the federal land. If you are a law enforcement officer and you are in the desert, it is difficult to know if it was the state side or the federal side and how to write the ticket. I think it would be easier for law enforcement and for the protection of our history to make things consistent. I would like to turn it over to Ms. Jill DeStefano in Las Vegas.

Jill K. DeStefano, President, Protectors of Tule Springs:

I have provided a PowerPoint ([Exhibit G](#)), map ([Exhibit H](#)), and letter from the Protectors of Tule Springs ([Exhibit I](#)) in order to discuss A.B. 152. One thing I would like to do for the Committee is tell you that the Protectors of Tule Springs is a nonprofit that supports both the Tule Springs Fossil Beds National Monument and the Ice Age Fossils State Park. We have signed agreements to provide the volunteers for both of these parks. As you know, at the state and federal level the employees are very few for these parks due to budget constraints. We also spend most of our time with education and public outreach as we have since 2006 when we embarked on saving this land as a national monument. We provide perimeter patrols. All volunteers are the current hike guides and are organizing cleanups. We are very pleased that soon we will be involved in providing the volunteers for our new visitor center at the state park.

We have provided over \$70,000 in financial assistance to the National Park Service as well as the state parks to fund needs that are not met by their budgets. On the map ([Exhibit H](#)), if you are not familiar with the northern Las Vegas area, this is the very northern part of the Las Vegas Valley. On the left side of the map, you will see that Interstate 95 travels out of town and in the lower right hand corner, the monument actually ends at the northern 215 Beltway. If you continue off the paper to the right, you will come to Interstate 15. In green is the almost 23,000-acre Tule Springs Fossil Beds National Monument that was legislated and passed by Congress and signed by President Barack Obama in December of 2014. You will see a pink triangle in the lower right-hand area which is the 315-acre state park. The hatched area is a national historic site that was put into effect because of the big dig that we will discuss in a moment.

The state park is surrounded on three sides by the National Park Service land. The Protectors of Tule Springs are very concerned that the PRPA laws of the federal government provide a greater penalty for willful destruction or theft of paleontological resources but our state laws

do not. We believe the state park would be a sitting duck for those professional problems and people looking to sell fossil resources because the penalties are so low. I will turn it over to Dr. Stephen Rowland of the University of Nevada, Las Vegas, who will tell you why these fossil sites are so important and so rare.

Stephen M. Rowland, Ph.D., Professor, Geoscience Department, University of Nevada, Las Vegas:

I am also on the Ice Age Park Foundation board. My students and I do research in both the Tule Springs Fossil Beds National Monument and in the Ice Age Fossils State Park. I want to reinforce that there are many fossil localities in both the national monument and state park lands. The ones that Assemblywoman Monroe-Moreno listed—mammoth, bison, camels, horses, ground sloths, saber-toothed cats, et cetera—these are vulnerable, and the state park locality is actually closer to access by people who might do nefarious things than is the national monument. It should certainly have an equal level of protection in my opinion. There are a lot of fossils out there that should be protected.

Jill DeStefano:

The Paleontological Resources Preservation Act is applicable on all federal public lands. I spoke with Vincent Santucci, head paleontologist for the National Park Service in Washington, D.C., and asked him how many times PRPA has been utilized in the last ten years of its existence. He explained to me that only five people have been convicted since the law has been enacted, and all of those are professional fossil hunters who then sell mammoth tusks, teeth, and other skulls on the black market.

On the other side, there is some concern that strengthening these penalties on state land would result in children and juveniles with a felony record. The opposite is true. We use the opportunity to educate these kids as to the value of these fossil resources and why it is important to leave them where they lay. In fact, if you look at the Petrified Forest National Park, since 2009 when this law was enacted, over 500 incidents of children picking up a piece of petrified wood have been documented. Not one single ticket has been written. I do not think the state parks law enforcement will be tougher than the National Park Service law enforcement. This is not to go catch kids and juveniles and start giving them felony records.

Questions about PRPA have come up—why was it even necessary, were not fossils on federal lands already protected by federal laws—and the answer is yes, but the penalties were so weak for collecting these fossils that it was not a deterrent for the high commercial value commanded by a vertebrate fossil. Vertebrate fossils are rare. It is extremely rare to have the assemblage of vertebrate fossils dating back over 300 years on our lands here in Nevada. Once they walk off the land, they are gone forever. In 1999, the National Park Service had identified 721 documented incidents of paleontological resource theft or vandalism in the parks in just five years. That is why this federal law was passed. I want to assure you as you see the 721 documented incidents and now since the passage of PRPA, only five people have been convicted. It is a deterrent to those who are out there, as a living, doing harm. I would like to turn this over to former councilwoman Ms. Anita Wood, one of our board members, for her comments.

Anita Wood, Board Member, Protectors of Tule Springs:

I have had the privilege of serving the residents of North Las Vegas for eight years as councilwoman for Ward 3. One of the great joys that I had in doing so was to take a tour of our national monument and literally get to see and touch a 7-foot-long mammoth tusk that was over 200,000 years old. To see that kind of history is just incredibly, mind-blowing, and you realize just how important our history is and how lucky we are to have a site like this. I have been told over the years that we have fossils that date back farther than you find in the La Brea Tar Pits and, from scientific research, that we could actually figure out what happened to the dinosaurs based on the fossils that we have in our national monument and state park. I think those are incredible facts. We know that your legislative body approved the legislation that created the Ice Age Fossils State Park two years ago. Now we are simply asking that you help us to protect that same park. We fear disparity in the sentencing between the state and federal lands is just making state lands a target for these kinds of antiquity looters who are destroying our history and the history of our state. So we ask for your support on this bill. As Ms. DeStefano pointed out, this is not intended to hurt children. The Protectors of Tule Springs has an amazing program where we partner with the Clark County School District. We go into the schools every year to talk to young children and make them aware of the Ice Age Fossils State Park, make them aware of the fossils that are there, how important they are, and how they should be treated with respect. This is really something that is meant for those who are making a profession out of looting our history.

Assemblywoman Tolles:

We are not just talking about theft or vandalism which are critical, but we are really talking about erasing history. You do not get to get that back, so I really appreciate the importance of this. You did a wonderful job answering most of my questions with the presentation. I think the only questions that arose for me were the penalties. Certainly I appreciate the explanation that it is in line with the federal laws and how it has been a deterrent on the federal level. In the example of kids who do not fall under this, I wonder about that in-between, the nonprofessional but somebody who is in that in-between category, just goofing around, not part of an organized crime, and this penalty is pretty steep for that person who just does not realize that this is part of a concerted, organized effort to traffic. Is there any discussion about that when determining these penalties? I am absolutely supportive of this effort, but just wanted to broach the subject of the in-between offenders.

Jill DeStefano:

Yes, always there are people who do not mean harm or do not know the rules and regulations that come with any public lands area. In discussions with the new state superintendent, he has spoken to almost 20 people who were out picking up bones, looking at what is out there, and maybe they even pocketed shards of bone. He is intent, as we are, on making this an educational process. On federal land there have been numerous occasions where we have witnessed people picking up a bone and we just educated them and asked them to put it back. Not even citations or anything like that was even written. I asked the state superintendent how many fines of \$1,000 have been issued and he just chuckled at me and said, No, that is not something we do on a regular basis. So I think the bill explains that it is intentional and willful and not people just out there looking for things like that on a curiosity level.

Assemblywoman Krasner:

I care very much about this as well and it is historical and important to all of us, but I do have the same concern as Assemblywoman Tolles. I would hate to see some kid go put a shiny rock in their pocket that happens to be over \$500 and then—even though you said that is not something we ever do is put a felony on their record—put them in prison for a minimum of a year. It does say in the bill that is what would happen. I am wondering in section 1, subsection 2, line 22 if you could change the word "shall" to "may" and give the discretion to the judge depending on a case-by-case basis, if the presenter of the bill might consider that?

Assemblywoman Monroe-Moreno:

Yes, we could consider that.

Assemblywoman Peters:

I do not think that we take cultural resources as seriously as we should in the state of Nevada, and I appreciate your bringing this forward. You spoke about a very specific site in your presentation, but we have some new state parks and other state lands and just want to clarify that this would also cover those with the same intent to protect resources whether identified or not on those lands?

Assemblywoman Monroe-Moreno:

I would have to defer to legal, but I believe that once it is changed in statute it would include all parks.

Assemblywoman Peters:

Would this cover other state lands and cover known and unknown cultural resources or only catalogued cultural resources?

Bradley A. Wilkinson, Committee Counsel:

Just in looking at the bill, I believe it would cover those. I do not see any reference to catalogued versus non-catalogued. I would have to look at that a little bit more.

Assemblywoman Peters:

Can we discuss that after the meeting, Assemblywoman Monroe-Moreno?

Assemblywoman Monroe-Moreno:

We can do that.

Assemblyman Roberts:

This park is right next door to my district. To piggyback on Assemblywoman Peters' question, I understand that it may apply to all other sites in the state and this may be more for your witnesses down south, but most of those other sites that have historic artifacts, are they not already on federal land so they are already covered by the federal law? So this would not be a huge addition to protecting this site and some of the other small sites that are not on federal land?

Assemblywoman Monroe-Moreno:

I believe when we hear the testimony in support of this bill, we will hear from other communities that have a vested interest in our state parks and will testify that this would be protection to their sites as well.

Assemblywoman Nguyen:

I believe that we need to protect our cultural resources in this state and we have been lax about it in the past. I tend to agree that the current misdemeanor penalty is probably not much of a deterrent. In your presentation you mentioned that this change to the statute would make it similar to existing federal law and give clarity to officers that were in a situation where they did not know whether or not to issue a citation in the areas that straddle federal and state lands. I am not really sure how this would give those officers any more assistance. Would not there still be that same jurisdictional problem? Would they not have to still figure out if it was on state or federal land?

Assemblywoman Monroe-Moreno:

There is some fencing in the area, and as we develop the state park, there will be signage in the area. What it does do is make consistent no matter where you are at in the fenced area, whether you are on the state side or the federal side, whether there is signage or not, the penalties are the same no matter where you are within Tule Springs.

Assemblyman Edwards:

Given that I have the Valley of Fire State Park and Gold Butte National Monument in my district and the fact that I love the national parks, I am in favor of protecting them. But I want to make sure that I understand your bill. It looks like for a second offense for something that might cost \$600, the penalties are going to be possibly sending somebody to prison for 10 years plus a \$20,000 fine. My concern is that in the 10 years that they could be in prison, that is going to cost the taxpayers \$250,000. I would like to know if we could possibly put other penalties in there that might be much more meaningful to actually fix the problem of what they did, make sure that people cannot do that rather than sending them to prison for 10 years at that kind of expense to the taxpayer. I would even submit we give community service to people for a whole lot of other things. Why not have them build trails or do something that would actually contribute to the state parks rather than send them to prison?

Assemblywoman Monroe-Moreno:

I think if you look at section 1, it clearly states that it is commercial. The intent of this bill is to make consistent the penalties for those that are damaging, selling, or defacing our prehistoric fossils commercially.

Assemblyman Edwards:

Looking at section 1, I am reading it as except as otherwise provided, it is a person who "knowingly" does it.

Assemblywoman Monroe-Moreno:

If there is someone going into any of our state parks, federal parks, and federal lands with the willful intent to destroy, to excavate, and sell to make a profit commercially, that is the intent of this bill. The further intent is to make our state law consistent to what the federal regulations are. If we were to do anything different, we would still be inconsistent.

Assemblyman Edwards:

I guess I am looking at the word "or," and maybe I need legal counsel's guidance. By using the word "or," does it not mean that each of those would be subject to the penalties?

Bradley Wilkinson:

Yes, your interpretation is actually correct. Either of those acts would fall under the scope of this statute.

Assemblyman Edwards:

So the penalties would be to an individual person and it would have to be to a person to send them to prison for 10 years?

Bradley Wilkinson:

Yes, that is accurate. One thing I should clarify regarding felonies in general, although it provides for prison time, certainly the judge is not required to send someone to prison. Probation would certainly be a possibility as well.

Assemblyman Edwards:

I guess that is why I was looking at "shall," which I believe you said you could change to "may." Would that solve that problem?

Bradley Wilkinson:

Actually, no, that is a drafting issue—all of the *Nevada Revised Statutes* (NRS) reads that way for every punishment. You will find it says "a person shall be punished by," but it does not mean that a person is actually going to go to prison. That decision is up to the judge.

Chairman Yeager:

In all of these felony provisions, you "shall" be sentenced to prison so you will be sentenced to prison, but then the judge can suspend the sentence. I think that is why they read that way because whenever you get probation, there is a suspended sentence whether it be jail or prison. The only exceptions are some statutes in NRS which say that the judge shall not suspend the sentence. There are certain offenses for which you have to go to prison, but just because it says "shall," it is confusing but it does not mean that you have to go on this particular offense because it does not restrict the judge's discretion to suspend the sentence within the statute.

Assemblywoman Cohen:

My question is something that Professor Rowland might be best equipped to answer, but any of you can. What kind of fortunes are these fossil hunters making? These are substantial, correct?

Jill DeStefano:

This is a global problem. The mammoth tusks, even the replicas, go for thousands of dollars. For somebody to be able to add to their collection in their home, a real mammoth tusk is extremely rare. Just the fact that they are rare on the ground, to have one of these pieces of art, as they think they are, in their homes is valued. There are fossil conventions all over the world and many, many fossils from supposedly private land are bought and sold. Because of the rarity, as these animals that do not roam the Earth anymore, fossil hunters will go out of their way to get ahold of them any way they can.

Chairman Yeager:

Do we have any additional questions for the presenters of the bill by Committee members? [There were none.] I will open it up for testimony in support of Assembly Bill 152 either in Carson City or Las Vegas.

Marla McDade Williams, representing Reno-Sparks Indian Colony:

I wanted to address two points that were brought up in the questions, the first being the question about federal land or state land. As you all know, Nevada is approximately 85 percent federal land so we are really talking about the 15 percent of state land that is left out there. To the last point on the discussion, on page 4, lines 19 through 30 [section 2, subsection 2(e)], it does discuss that very first offense saying that "upon sentencing a person who is found guilty of a category E felony, the court shall suspend the execution of the sentence and grant probation to the person upon such conditions as the court deems appropriate." There is certainly discretion in there on how the court would move that forward.

Michon R. Eben, Cultural Resources Manager, Tribal Historic Preservation Office, Reno-Sparks Indian Colony:

The Reno-Sparks Indian Colony is in support of A.B. 152. I provided my written testimony ([Exhibit J](#)) but for the sake of time, I will only hit the highlights. Historic and cultural resources have a special meaning and value to the various individuals, groups, and communities in the great state of Nevada. One resource may have high value to one group, but to another the resource may not be of cultural importance and therefore a low value. What we need to acknowledge and respect is the diversity of our state and hold all historic and cultural resources in high value. These items are a nonrenewable resource that once taken or destroyed can never be replaced. From my perspective as a Native American, there has been an ongoing, unintended and intended disrespect of Native-American culture that has occurred for generations in many forms, and today in 2019 it still continues through the removal of cultural items, vandalism, theft, looting, and destroying sacred places and sites.

Over the past several years, the Reno-Sparks Indian Colony has provided witness testimony and submitted compelling documents to federal district courts. In 2011 I testified and provided a victim impact statement for the violation and sentencing of unlawful transportation of archaeological resources removed from public lands under the Archaeological Resources Protection Act of 1979. From the years 2004 to 2006, a father and son illegally removed Native-American cultural artifacts from the Bureau of Land Management public lands in the Black Rock Desert of northern Nevada, which is the aboriginal homelands of the Northern Paiute people. They transported these artifacts over state lines to California. In 2007, a federal investigation led to the discovery of thousands of Native-American artifacts in their homes, evidence of this family's illegal activity for decades. At the sentencing hearing, representatives from the Reno-Sparks Indian Colony and Pyramid Lake Paiute Tribe testified to the cultural value through the spiritual and historical significance that the looted sites held for our tribes.

The cultural value of an item is often far more than the commercial value, which is why we support the proposed language in A.B. 152 to add to the cost of restoration of the sites as part of the consideration of the penalty threshold.

To comprehend the impact of these crimes to the Native Americans, it is important to understand Native-American cultural values and the indigenous history of tribal nations in the state of Nevada. The Paiute, Shoshone, and Washoe peoples' way of life and traditions are connected to the land through their languages and unique cultures. In accordance with Native-American values and spiritual beliefs, the entire universe, world, and natural environment are connected. All interconnections between the spiritual and physical world are intertwined with everyday life. Our ancestors lived, breathed, danced, sang, prayed, hunted, defended, weaved, gathered, cooked, built, twined, laughed, loved, and most of all recognized their existence in the land they respected. All of these activities were incorporated with prayers, religion, and spirituality.

Ancestral homes, places, and cultural items that continuously become vandalized, destroyed, and looted lose their spiritual integrity and Nevada loses valuable tribal history, which can never be recovered, mitigated, or healed. These devastating crimes result in disturbing a part of the land and scenery that are shared by all Nevadans. Unlawful acts and crimes that injure and destroy any history or culture in the great state of Nevada is a significant concern to Native-American communities.

We believe that the increase in penalties is one of several significant ways to address the irresponsible actions of individuals who are committing crimes on Nevada's culture and history. Again, the Reno-Sparks Indian Colony supports the proposed language in A.B. 152.

Kyle J. Davis, representing Nevada Conservation League:

We are in support of A.B. 152. We appreciate the sponsor for bringing it forward. Nevadans have an incredible amount of historical and cultural resources in our state parks and other state lands. I believe this bill does a good job of making sure that we appropriately value those resources on our state lands just as we do on our federal public lands.

Chaunsey Chau-Duong, representing Las Vegas Valley Water District Springs Reserve:
We certainly support the concept of this bill, and we appreciate Assemblywoman Monroe-Moreno for bringing this bill forward. We urge its passage.

Chairman Yeager:

Is there any other testimony in support of A.B. 152? [There was none.] I will open it up to opposition testimony to A.B. 152 either in Carson City or Las Vegas.

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

The only portion of this bill that we are actually opposed to is the increase in the penalties. I do want to thank Assemblywoman Monroe-Moreno for speaking with me as well as the women in Las Vegas who spent time speaking with me last night. Unfortunately, I thought I had submitted my amendment ([Exhibit K](#)) to the committee secretary, but I did not. It will be a conceptual amendment. Part of what I did was extend an olive branch when we were looking at the penalties. Instead of the first offense being a felony, we suggest increasing the first offense to a gross misdemeanor, the second offense to a category E felony, and the third to a category D felony along with removing the value portion because I think, as a competent defense attorney, I am probably going to challenge value if value is in the statute as we do with grand larceny. You would probably have to fly an expert in every time you want to have someone testify. These things are priceless. It is very difficult to put a value on something like this.

One of the concerns we had with the bill are the same concerns that Assemblywoman Tolles and Assemblywoman Krasner laid out. I am concerned this is close to a high school and that you have a kid just doing something stupid, taking something of value, and then they become a felon. I know that is not the sponsor's or the Tule Springs speakers' intent, but prosecutors are going to follow the law. That is their mandate. If it is a felony, then we are looking at felony penalties and felony problems. That was part of the issue we had with ramping up to a felony right away because I feel like young kids make dumb decisions. I do not want them to tear up our cultural resources, but anybody who drove up from the south this year and went through Hawthorne and rode past that mountain by Walker Lake and saw "Joe loves Susie" in spray paint on the mountain, well, that is stupid and Joe probably will not love Susie forever but now it is there and we all have to look at it. Kids just make dumb decisions and I do not want them being penalized for a felony for a dumb decision like that. I do understand wanting to go after some of the more experienced people who would come to this site and knowing better, steal those resources and put them on the black market. I do understand the desire to go after them. Increasing the penalty to align with federal penalties in the surrounding land is a decent argument, but as we have noted, the feds are actually taking a step back from some of their federal penalties with the First Step Act that recently passed. We have all realized that criminal justice reform is necessary. In closing, those are our concerns with the bill. Our conceptual amendment would be to:

- Remove the value and change that first category E felony for the first offense to a gross misdemeanor. It still puts it in a more serious realm, but not the felony realm.
- Change the second offense and remove the value for the B and C felonies, and change that just to a straight category D felony, which is punishable by 1 to 4 years in prison or probation.
- Change the third offense to a category C felony and make that punishable by 1 to 5 years in prison. I think if you are continuing to do this, your penalties should increase.

Chairman Yeager:

Thank you, Mr. Piro. Just one clarification, we did receive the amendment but we did not get it until after the meeting started this morning. If you want to make sure in the future that those documents are uploaded to the Nevada Electronic Legislative Information System—not just for you, but for everyone—we need to get those by 12 p.m. the day before to our Committee manager so she has time to upload it. If they come in after that, then I have to make special exceptions which I do not like to do because members of the Committee of course are trying to prepare, so it is hard if the amendments are not there when they are getting ready for the meeting.

John Piro:

Understood, Mr. Chairman.

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

I also want to thank the sponsor for providing this bill and bringing it forward. We absolutely agree that Nevada is so vast and has so many great cultural resources that we do need to protect. We need to make sure that there are sufficient laws in place to make sure that these sites are there for the next generation. Unfortunately, as indicated by Mr. Piro, we disagree with the penalties. We want to make sure that the silly kid who makes a mistake does not become a felon, does not lose his voting rights, and does not have that attachment. We have discussed in other bills that there are possibilities for diversion. For this offense, diversion would not be a possibility. They would have to be able to provide that this was due to some mental health or substance abuse issue, and unfortunately, with this case, that is not something that we would be able to prove for that kid. So that is our main concern, which is why we have proposed that amendment ([Exhibit K](#)).

I would just note that the American Bar Association in discussing the federal sentencing reform has indicated that 5 percent of the world's population is within the United States, however, the United States has nearly a quarter of the world's prisoners including one-third of all women incarcerated worldwide. That is part of the reason why they are focusing on the nonviolent offenses and trying to reduce those as well. Hopefully this is something that may be reduced in the federal system. I understand why our focus is trying to make it in line with

the federal guidelines; however, I do not think that is something that is going to sustain for the rest of our laws. I think that should be something we consider, that we do not have to have this match the federal offense. We should focus on what makes sense for Nevada.

Assemblywoman Tolles:

This may be something that we can follow up with later, but Ms. Williams provided some language and pointed to where there can be discretion and there can be some room to negotiate and work with somebody who might be found guilty, but not necessarily at that steeper level. I wondered if you could speak to that a little bit for the sake of this discussion.

John Piro:

I believe what she was saying is that the category E felony, if you have no other felonies on your record, is mandatory probation. You could get some jail time up front, but a category E felony right off the bat is mandatory probation as long as you meet the criteria to make that. There are definitely benefits in having that first time offense a category E felony if we are going to decide that this is a felony on the first offense. But you are still going to have to get a prosecutor if you want to reduce it from a felony to a gross misdemeanor, so it is all prosecutorial discretion. We are going to have to negotiate with the prosecutor and if you get a good prosecutor, great. But if you get a not so great prosecutor—and we do not have great people in all offices and we are all honest about that—then you may not get that reduction.

Assemblywoman Backus:

I am not sure if it is a question or a statement, but for the noncriminal lawyer up here I just wanted to walk through stuff. Under section 1, subsection 1, paragraph (a), it is designated as a category E felony but the penalty that follows thereafter allows for the option of either imprisonment or a fine or both. It looks to me like the judge would have the discretion of just issuing a fine and not even going to probation. Originally, I kept scratching my head and as I was looking at the category E felony [section 2, subsection 2(e)]; it obviously starts with a mandatory sentencing that could be probation. Immediately before that, it does say under NRS 193.130, subsection 2, "except as otherwise provided by a specific statute." I take that then to mean that the specific statute that is being proposed today would allow the judge to have the option of no incarceration and just allow a fine. Is that my understanding on how that is done?

John Piro:

Perhaps legal could weigh in, but because these are specific I believe that that could be the case, but it has been my experience in Clark County that no judge just does informal probation or just a fine. That is a rarity, not the rule.

Kendra Bertschy:

We do not have what other states refer to as informal probation. If you are placed on probation, that includes search and seizure clauses and that is the same for any felony with the exception of sexual offenses.

Chairman Yeager:

This is why I love being on the Judiciary Committee, because every time we hear a bill somebody notices something that I did not. I think the intent behind the drafting of this bill was to make these penalties align with the federal penalties. I am not aware of other statutes where you could get a felony and get imprisonment or just get a fine or both. We will look at that and we may need to do some changing around in that language. I think the reason it is so unique is it is patterned off what the federal system does. That maybe tells you how the federal system is very different from what we do as a state system. We will continue to look at that, and I will work with the sponsor to make sure that this makes sense going forward. I anticipate that if someone were convicted under this, our judges would not know quite what to do with this kind of statute since there is not a precedent for it. We will make sure to get to the bottom of that.

John Piro:

I spoke with the women in Las Vegas and that was their intent, to model it after the federal guidelines.

Chairman Yeager:

Are there any additional questions from Committee members? [There were none.] Is there any opposition testimony to A.B. 152? [There was none.] Is there any neutral testimony to A.B. 152? [There was none.]

Assemblywoman Monroe-Moreno:

Thank you, Committee members, for hearing A.B. 152. In response to some comments in opposition, the entrance to our Ice Age Fossils Park literally sits across the street from Shadow Ridge High School. To date, there are no documented arrests or detainment of any of the students at that school. The Protectors of Tule Springs have done an amazing job working with the Clark County School District to bring awareness and appreciation of our state park. I speak often to the students at the Shadow Ridge High School, and they appreciate having the park there and are excited for the growth of the park. I am a mother of three and grandmother to two, and we have been to that park and spent the day hanging out and looking at the fossils in the park. As adults, parents, teachers, and community leaders, we have a responsibility to make sure that the youth around us have an appreciation for our cultural history. If you have not had the opportunity to come to Tule Springs, I invite you to come explore and take a walk through the twisting canyons—it is literally a walk in our past—and see the rare Las Vegas bearpoppy. It is a yellow flower that somehow manages to thrive in the desert. This bill is in no way, as a mom, meant to harm our children. The intent is to preserve our history.

[A letter in support of A.B. 152 was submitted by Rodney Mike, Tribal Chairman of the Duckwater Shoshone Tribe, but was not mentioned ([Exhibit L](#)). A letter in opposition to A.B. 152 was submitted by Jim Hoffman on behalf of the Legislative Committee of the Nevada Attorneys for Criminal Justice but was not mentioned ([Exhibit M](#)). These exhibits will become part of the record.]

Chairman Yeager:

Thank you, Assemblywoman Monroe-Moreno and the presenters in Las Vegas. I will now close the hearing on A.B. 152. I will now open the hearing on Assembly Bill 195, which revises provisions governing crimes against property. Welcome, Assemblyman Flores and Mr. O'Callaghan.

**Assembly Bill 195: Revises provisions governing crimes against property.
(BDR 15-130)**

Assemblyman Edgar Flores, Assembly District No. 28:

I am here to present Assembly Bill 195 as amended ([Exhibit N](#)). I represent some of the hardest working men and women in this state, and it is a privilege for me to be able to present this bill on behalf of my constituents.

First, I would like to explain very briefly what a skimming device is, how it works, and specifically how it is used to steal credit and debit card information. Then, I would like to explain *Nevada Revised Statutes* (NRS) 205.606 which is currently the statute we have in place that addresses possession of a skimming device. I would like to address some of the challenges that exist as the law is currently written because of how technology has evolved. Next, I will go into how I believe A.B. 195 will help law enforcement address some of those concerns with skimmers and improve on what we have in statute now. Lastly, I would like to hand it over to Mr. O'Callaghan and Detective Michael Gomez in Las Vegas and they will give some personal insight as to how law enforcement sees this problem evolving and growing and how they think this bill will help them as well.

A skimming device or skimmer is a scanning device—a device that recodes information—for unlawful purposes. They are typically put on gas pumps or anything that dispenses cash. Unfortunately, because of how they are constructed, sometimes it is impossible to detect them with your eye. What I mean by that is if I was standing before an automatic teller machine (ATM) with a skimming device on it, the way it is constructed and built it looks identical to how a credit card reader looks. So you would insert your debit or credit card through the skimmer and then the actual gas pump or ATM and you would not realize that it did that. Now they are becoming increasingly savvy, and they actually place the skimming device behind the actual card reader so that the consumer does not realize that their card has been captured by the skimmer. You are still able to dispense gas or get cash, but it also goes through the skimming device which makes them even more challenging to detect.

Currently, as NRS 205.606 is written it makes it a category C felony to be in possession of a skimming device with the intent to use it unlawfully. The intent to use it unlawfully is critical because a lot of small businesses—personally I run our own shop and we could be guilty of having a skimming device—have credit card readers which are technically a skimming device. The little square that people carry on their phone is technically a skimmer. That is why it is so important that we have that language "with the intent to use unlawfully."

Unfortunately, the challenges we are seeing are because a lot of businesses and individuals have them for lawful purposes, which makes it very difficult for law enforcement to go after them for simply having them in their hand. Their investigations have become stymied even though they know somebody was using it unlawfully because they have to be able to prove that intent. Beyond that, what makes it even more difficult is that technology has evolved. As technology evolves, it creates a lot of challenges for us. Law enforcement would get three or four reports that individuals had their credit or debit card information stolen from a specific gas pump, so they set up a sting operation to wait for the individuals to come back to remove the device. When they remove a skimming device, it has captured your debit or credit card information, it extrapolates that information, and they then use it to do online purchases or clone the credit or debit card to utilize it. Now, because of the advancement in technology, they do not have to do that anymore. They now have Bluetooth technology, so once it has been affixed to the gas pump or the cash dispenser, they simply have to park their vehicle next to it and they can download that information and have all the information captured on their computer to utilize it that way. Understandably, because of the way the law is written now, we are not addressing that concern of downloading the information unlawfully even though we know they intend to use it unlawfully.

Specifically, I am working off the amendment ([Exhibit N](#)), not the language in the original bill. Section 1, subsection 1, paragraphs (a) and (b) indicate that a person shall not install or affix, temporarily or permanently, a scanning device within or upon a machine with the intent to use the scanning device for an unlawful purpose; or electronically access a scanning device for an unlawful purpose. Specifically, that captures the individual who is parking next to a gas pump or a cash dispenser and is downloading that information to their device.

As used in section 1, subsection 3, "machine" means a machine used to conduct financial transactions. The amendment has the word "commercial" crossed out, but I will very likely leave that word in there and use "commercial or financial" transactions. The reasoning behind that is we want to cast as wide a net as possible. If "financial" transaction somehow limits some of these transactions that we are trying to go after or vice versa, we are just probably going to use both. It is a drafting question, but the intent there is to cast as wide a net as possible. "Automated teller" is again anything that dispenses cash, and we put the language in there about gas pumps.

Section 2, as it relates to NRS 205.607, specifically addresses the concern that I previously mentioned that there are good actors. Small businesses technically have skimming devices that they use to operate their businesses so we want to make sure that we do not go after them. Anybody who is utilizing these skimming devices for lawful purposes is not captured here. You will see that I am not changing the category C felony. I am not touching that as we have already agreed as a body that that is the punishment that fit this crime. I am strictly opening the toolbox and putting more stuff on the table for law enforcement to use.

I would like to hand over the presentation to Mr. O'Callaghan and Detective Michael Gomez in Las Vegas.

Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

First of all, I want to thank Assemblyman Flores for working with us on this issue for the last couple of sessions. I thank everybody on the Committee for meeting with me. I would like to hand over the presentation to Detective Mike Gomez in the Financial Crimes section. He handles these types of crimes as well as teaches this subject.

Michael Gomez, Detective, Financial Crimes, Las Vegas Metropolitan Police Department:

You will see on our PowerPoint presentation ([Exhibit O](#)) skimmer statistics we have seen in Las Vegas. It is a dramatic increase over the years [page 2]. In 2014, we had 24 recovered skimmers, and in 2018, we recovered 265 skimmers. The majority of those skimmers were on gas pumps. In the year to date, we have recovered 32 skimmers in Clark County. Most of them are discovered by a single provider of credit. The victims' credit cards are being used and the common denominator is at one location, and normally we find a skimming device attached or installed in the interior of the device. They can also be discovered by an employee utilizing the security features on their pumps.

Every installed skimmer poses a financial loss to businesses and personal accounts [page 3]. We have had some small businesses lose \$85,000 from one card being skimmed. The loss for that small business was so much that they almost had to close their doors. A local utility company lost over \$175,000 off one skimmed card. The United States Secret Service states the average skimmed card is used for no less than \$500. In my personal experience, I believe that to be a low estimate. I have seen cards used from \$3,000 to \$5,000 on each card captured. On average, credit card skimmers will have 30 to 40 payment cards stored on them. When you do the math, it adds up quickly. For 2018, we recovered 265 skimmers, and added together that is \$37 million. The numbers that are stored on these skimmers that we recover are not removed when they download them. We have a record of the amount that they actually captured and used. The most we found on one skimmer device is a little over 2,000 accounts that were affected later on.

You will see on page 4 ([Exhibit O](#)) what used to be our biggest problem—the handheld scanning device. This was used by waiters, waitresses, small businesses that were corrupt in scanning your credit cards or obtaining information off the magnetic strip on the back of the credit card. As you can tell the one on the right holds 8,000 credit card numbers, and it will broadcast via Bluetooth onto a laptop or compatible device so you can have it in-hand swiping the credit cards and it is being populated into a spreadsheet nicely to sell later on. The problem with these is you have to physically get your hands on the credit card. These are rarely used now, and most are broken down and made into additional skimming devices that are considered overlays.

Page 5 shows you what an overlay looks like. It overlays the exterior of an ATM or point of sale terminals. This one in particular was installed here in Las Vegas at a local casino. The battery will actually last up to 20 days off one charge. As you can tell in the upper right photo, the little window saying everything is fine is the same color scheme as the actual

machine. They have to retrieve this item. When they retrieve it, they download it. The items they receive are the account payment information. They either sell it or use it for themselves. When they use it for themselves, they have the capabilities of actually cloning these cards. In this particular ATM skimmer, they use it to clone the cards and make cash advances from between \$3,000 to \$5,000 from each card. The video you see on the screen is an actual installation of that skimming device. You could be behind the individual and not even realize it is being installed. He is there for a total of 17 seconds before he walks away with the skimming device installed.

If you look at the photos on page 6, the one on the left there is no skimmer. The one on the right, the skimmer is in place. If you notice, the color scheme is the same. These products are manufactured or stolen or purchased online. The color scheme is the same, but it is a modification of the original product so that it fits properly. The machine will work properly. You can insert your card and conduct your transaction, but the only caveat is that the skimmer makes a copy of the magnetic strip on the back of the card and copies a recording of your personal identification number (PIN). On the photo on the left, you can see the residue of the double-sided tape that was affixing that skimming device and camera onto the machine.

Page 7 will show you some details when we removed the skimmer device. From left to right, the first picture is the larger panel storing a large battery that we believe was removed and modified from a laptop. The lower portion of that panel is a camera capturing your PIN as you use this ATM. The top right photo is the removal of the actual card reader. You will see that it fits right over the top. Again, you will not know it is there until you pull on it. If you were to pull on the card reader, you would feel the little tug-of-war between the two adhesive strips they have attaching it. On the lower right photo you can see the pinhole for the camera that was recording the PIN pad.

The next video is not of this one being removed, but one similar to it at another location. As you can see, by pulling on it you can quickly remove it from the actual machine. They are this easy to remove. I stress not to pry on them, but just pull them and you will feel the difference.

On page 8 ([Exhibit O](#)) are photos of point of sale terminals that we have all used before in stores to conduct transactions. All of the ones on the screen are overlays to obtain your magnetic strip information. They fit right over the top just like the ATM, but these are typically at the counter. I have numerous videos of them actually installing it while having a conversation with the clerk checking the person out. The majority of these are in the self-checkout areas. This next video (page 9) shows the overlay being removed from the store.

We have seen a decrease in people who implement the Europay, MasterCard, and Visa chip readers of these actual overlays on the machines. There are also other versions out there. As soon as there is a new point of sale terminal, give it a few months and then there will be another overlay to attach to it.

Gas pumps are the bulk of skimming devices we are recovering in Las Vegas. The photos on page 11 show the security stickers on gas pumps. These were implemented in the hope of preventing it. It has not prevented much and has actually increased. They just cut them and rip them off. These security stickers are serialized. If you were to pull them, it voids it and you cannot put them back on. If you rip the entire sticker off, it will leave a residue of void on the machine. Before you use the pump, look at the stickers to see if they have been removed or tampered with. With our providers here in Las Vegas, that has really assisted us in recovery and prevention. It is not slowing it down at all. The serial numbers are all different. They should not match, just like our currency. Look at them, compare them: if they match, there is something wrong and alert the manager. There are locks on every gas pump, but with every lock there is a locksmith to pick it or pry them open using typical tools. You can see the pry marks on the two gas pumps pictured on the far right of page 12. We have some instances where they have actually changed the locks and locked the owners out of their own pumps just so they can keep the device locked in the pump hoping to prolong their activity in downloading the information from a distance.

Page 13 is a picture of a typical Bluetooth skimmer removed from the gas pump. The item on the far left is the attachment for the PIN pad, the lower left is the attachment for the card reader, and the upper right is the Bluetooth skimming device, which actually connects everything together and broadcasts. Typically, you can download with Bluetooth about 30 feet away. We had some cases last year where with the right technology you could be up to a mile away. Typically a laptop or similar device is used to download the data, but the data is also stored on the actual skimming device. It gives us a good indication of how many they have used, time frames, et cetera, for our investigations.

The photo on page 14 ([Exhibit O](#)) shows you what it looks like installed. To the untrained eye there are so many wires when you open a gas pump that you do not know what is what. But when you break it down you can see from top to bottom, that white clip on the previous page is installed on the back of the card reader, the black tape is the chip set to broadcast via Bluetooth, and below that is what interferes with the communication with the PIN. When you enter your ZIP code or PIN for your debit card, it is captured, broadcast, and time-stamped so they know exactly which PIN or ZIP code goes with which card that was used.

The photo on page 15 shows you what a parasite skimmer looks like. These are intended to pass detection—like you saw on the previous slide, all the wires hanging from the card reader—they are to remove the card reader and replace it with their own. The photo on the left would be a traditional card reader; the one on the right is compromised. You can see the additional green board below it which also broadcasts via Bluetooth. All of the power you need for these devices is obtained from the actual gas pump itself. Typically when the clerk does their monitoring of the actual devices, they open it up and look for the ribbon wire and do not see this type of skimmer. Some clerks are not educated enough to find it, unfortunately. [Mr. Gomez also submitted [Exhibit P](#), talking points in support of [A.B. 195](#).]

Chairman Yeager:

Thank you, Detective Gomez. It is good to see you again. I am pretty sure you taught the course at the Citizens' Police Academy that I took on this topic last year. I, like all of my colleagues, now pull on the card reader device when I go to the gas station to see if it is a skimmer because of your course. Thankfully, I have not found one yet. I am a little distressed to learn that they are putting them inside the reader as that will make it harder to figure out that they are there.

Assemblyman Roberts:

A lot of these groups are organized from out of state, come to Las Vegas to prey on tourists, and take advantage of our transient population. Do you think this will help deter those groups from coming to Nevada and go to Atlantic City or somewhere else?

Michael Gomez:

I believe it gives us another tooth to bite with. Usually the person who installs it is not the person who receives the information on the download. That person hires or trucks people in just to install these devices. We arrest them for possession of the device, and then another person gets hired to do the installation. The person who is downloading is the person making the money and funding the majority of the activities. He is the head of the group and the one making all of the money. We find in our investigations that the installers see how much the person is making so that is when they start their own crew, and then it spiders from there. More people are hired to install so they can sit back and download the data from the devices and never have any consequences. There is no law in effect to actually prosecute the individuals who are downloading the data.

Assemblywoman Cohen:

Is there an issue also with businesses that are skimming and selling off that data? What are we doing about that?

Michael Gomez:

We have not had a lot of businesses recently that have been using the handheld skimming device in their business to obtain credit card information. In my experience, for the last ten years, we have not had a business engaging in this activity in the last three years. Most businesses have gotten away from doing the criminal part of it.

Chairman Yeager:

Do we have any further questions from Committee members at this time? [There were none.]

Brian O'Callaghan:

I just wanted to put it on the record that we had some witnesses, but they did not want to put their names on the record so they are not present today.

Chairman Yeager:

I will open it up for testimony in support of A.B. 195.

John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:

We would like to thank Assemblyman Flores for bringing A.B. 195, and we are in strong support. As you heard the testimony of Detective Gomez, we are almost reaching epidemic proportions with respect to this crime. What this proposed language does is give us statutory provisions which match what we are seeing on the ground. With that, we are in support of A.B. 195.

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:

The Chamber is also in support of A.B. 195. We appreciate Assemblyman Flores bringing this bill forward. We agree with the intent of the bill and efforts to protect both the consumer and the business. We agree with the sections as drafted and as amended in regard to the installation of the skimming device for unlawful purposes and also the definition of the word "machine."

Assemblywoman Cohen:

Have you heard from your members as to what they are doing such as new technology? Obviously they are the victims and I am not trying to put the onus on them, but what types of things are they doing to try to keep their customers safe?

Paul Moradkhan:

Absolutely, they have surveillance cameras, locks, and the stickers. They are constantly trying to keep up with technology. As you know, criminals are unfortunately a little more advanced in some of these issues. They are constantly keeping up on it as best they can as it is a cost to them, customers, and to financial institutions. They are doing their best, and we believe this bill will help give them another tool to work with law enforcement.

Andy Peterson, Vice President, Government Affairs, Retail Association of Nevada:

We strongly support this bill as well.

Chairman Yeager:

Is there any other support testimony for A.B. 195? [There was none.] Is there any opposition testimony on A.B. 195? [There was none.] Is there any neutral testimony on A.B. 195? [There was none.]

Assemblyman Flores:

I want to thank everyone for their time in allowing me to present A.B. 195. I look forward to answering any questions that may arise at a later time.

Chairman Yeager:

Thank you everyone for the presentation on A.B. 195. I will now close the hearing on A.B. 195. I will now open it up for public comment either in Carson City or Las Vegas. [There was none.] Do we have anything from Committee members? [There was nothing.] We will start tomorrow at 8 a.m. and will be hearing one bill. It is the justice reinvestment

bill that came out of the Advisory Commission on the Administration of Justice. I will be presenting that bill with Justice James Hardesty, so our Vice Chairwoman Cohen will be running the meeting. I do anticipate that the hearing on that bill will likely be between 3 to 3 1/2 hours to get through the entire hearing. Thank you in advance for reading it as it is one of the largest ones we will get this session.

The meeting is adjourned [at 10:28 a.m.].

RESPECTFULLY SUBMITTED:

Traci Dory
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a PowerPoint presentation in support of [Assembly Bill 183](#), submitted by Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1.

[Exhibit D](#) is a letter in opposition to [Assembly Bill 183](#), dated March 6, 2019, to Assemblywoman Daniele Monroe-Moreno and members of the Assembly Committee on Judiciary, written by John Witherow, President, Nevada-CURE, and submitted by Craig Caples, Vice-President, Nevada-CURE.

[Exhibit E](#) is a letter to Chairman Yeager in support of [Assembly Bill 183](#), dated March 7, 2019, from Nicole D. Porter, Advocacy Director, The Sentencing Project.

[Exhibit F](#) is a letter to Chairman Yeager in support of [Assembly Bill 183](#), dated March 6, 2019, from Ashley Daftary, Faculty Member, University of Nevada, Reno.

[Exhibit G](#) is a copy of a PowerPoint presentation in support of [Assembly Bill 152](#), submitted and presented by Jill DeStefano, President, Protectors of Tule Springs.

[Exhibit H](#) is a map of the Tule Springs Fossil Beds National Monument, submitted by Jill DeStefano, President, Protectors of Tule Springs.

[Exhibit I](#) is a letter to members of the Assembly Committee on Judiciary in support of [Assembly Bill 152](#), dated March 4, 2019, from Jill DeStefano, President, Protectors of Tule Springs; Jose Witt, Southern Nevada Manager, Friends of the Nevada Wilderness; and Mauricia Baca, Executive Director, Get Outdoors Nevada.

[Exhibit J](#) is written testimony in support of [Assembly Bill 152](#), presented by Michon R. Eben, Cultural Resources Manager, Tribal Historic Preservation Office, Reno-Sparks Indian Colony.

[Exhibit K](#) is a proposed amendment to [Assembly Bill 152](#), submitted by John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office; and Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office.

[Exhibit L](#) is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary in support of [Assembly Bill 152](#), dated March 5, 2018, submitted by Rodney Mike, Tribal Chairman, Duckwater Shoshone Tribe.

[Exhibit M](#) is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary in opposition to [Assembly Bill 152](#), dated February 28, 2019, submitted by Jim Hoffman, Nevada Attorneys for Criminal Justice.

[Exhibit N](#) is a proposed amendment to [Assembly Bill 195](#), submitted by the Las Vegas Metropolitan Police Department, and presented by Assemblyman Edgar Flores, Assembly District No. 28.

[Exhibit O](#) is a copy of a PowerPoint presentation titled "Financial Crimes," in support of [Assembly Bill 195](#), submitted by Michael Gomez, Detective, Financial Crimes Detail, Las Vegas Metropolitan Police Department.

[Exhibit P](#) is talking points in support of [Assembly Bill 195](#), submitted by Michael Gomez, Detective, Financial Crimes Detail, Las Vegas Metropolitan Police Department.