

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

**Eightieth Session
March 12, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:02 a.m. on Tuesday, March 12, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

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 Teresa Benitez-Thompson, Assembly District No. 27



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department
Nate Chio, Lieutenant, Special Investigations Section, Las Vegas
Metropolitan Police Department
Mary McElhone, Deputy Planning Director, Department of Planning, City of
Las Vegas
Lois Tarkanian, Mayor Pro Tem, City of Las Vegas
Darin Balaam, Sheriff, Washoe County
Laura Conklin, Sergeant, Reno Police Department
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
John T. Jones, Jr., representing Nevada District Attorneys Association
Michael Cathcart, representing City of Henderson
Mike Dyer, Director, Nevada Catholic Conference
William Ledford, Director of Advocacy, Lutheran Engagement Advocacy in
Nevada
Jessica Adair, Chief of Staff, Office of the Attorney General
Sara Cholahagian, representing Dignity Health-St. Rose Dominican
Joelle Gutman, Government Affairs Liaison, Office of the District Health
Officer, Washoe County Health District
Kay Landwehr, President, House of the Rising Sun
Marlene Lockard, representing Nevada Women's Lobby
Kimberly Mull, Private Citizen, Las Vegas, Nevada
Gary Landry, Executive Director, State Board of Cosmetology
Bryan Wachter, representing Retail Association of Nevada
Janine Hansen, State President, Nevada Families for Freedom
Stephannie Tucker, Private Citizen, Las Vegas, Nevada
Caitlin Gwin, Private Citizen, Las Vegas, Nevada
Jazz Sheffer, Private Citizen, Las Vegas, Nevada
Phil Sano, Private Citizen, Las Vegas, Nevada
Tamra Lampkey, Private Citizen, Las Vegas, Nevada
Nick Vassiliadis, representing Nevada Resort Association
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public
Defender's Office
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public
Defender's Office

David Carroll, Executive Director, Sixth Amendment Center, Boston,
Massachusetts
Laura Fitzsimmons, Member, Nevada Right to Counsel Commission
Marcos Lopez, Field Director, Americans for Prosperity, Carson City, Nevada
David Neidert, Private Citizen, Fallon, Nevada
Wiselet Rouzard, Field Director, Americans for Prosperity, Las Vegas,
Nevada
Scott L. Coffee, representing Nevada Attorneys for Criminal Justice
Dagny Stapleton, representing Nevada Association of Counties
Pete Olsen, Chair, Churchill County Commissioners
Joni Eastley, Member, Right to Counsel Commission; and Member, Rural
Subcommittee, Indigent Defense Commission
Jeffrey M. Wells, Assistant County Manager, Clark County
Darin Imlay, Public Defender, Clark County
Jamie Rodriguez, Government Affairs Manager, Office of the County
Manager, Washoe County
JoNell Thomas, Special Public Defender, Clark County
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada

Chairman Yeager:

[Roll was called. Committee protocol and rules were explained.] We have two bills on the agenda today. We are going to take them in reverse order. I will open the hearing on Assembly Bill 166. Assemblywoman Tolles will present the bill.

Assembly Bill 166: Revises provisions relating to prostitution. (BDR 15-861)

Assemblywoman Jill Tolles, Assembly District No. 25:

Issues of abuse, sexual assault, and exploitation are deeply meaningful to me. I have worked on these issues for a long time. My work in this area began early in the interim of 2013 when I was asked, as a private citizen, to participate on the Task Force on the Prevention of Sexual Abuse of Children. The more I studied, the more I listened, and the more I worked with stakeholders in our community, the more I became aware of a connection to another major issue: sex trafficking. It is very prevalent in our community, as I have come to understand this issue and really look at it, specifically with the lens of three different components: traffickers, buyers, and the victims. Last session this body passed Assembly Bill 260 of the 79th Session, which addressed the buyers' side of the issue.

This session I am bringing forward two bills. The first is to provide more access, outreach, and information to trafficking victims on educational scholarships and workforce programs to help them reach higher levels of economic stability. The hope is they will not be so vulnerable financially that they will enter into those same cycles of abuse and exploitation. Today I am addressing the third component, which is making sure we are going after individuals and businesses that are using those businesses for illegal sex trafficking.

We have heard a lot about this in the news over the past few weeks. The issue of businesses operating as a front for human trafficking has made the headlines after the well-publicized raids in Florida that led to some high-profile arrests. In December, Minnesota convicted 36 people for their roles in a Thai sex trafficking raid that shuttled hundreds of women from Bangkok to cities across the United States, including Phoenix, Las Vegas, Atlanta, and Minneapolis. This past weekend Seattle police said they rescued 26 women after a 3 1/2-year human trafficking investigation into massage parlors across the city. After receiving dozens of complaints, police investigated 11 businesses and arrested six people for promoting prostitution and money laundering.

What these and other stories across the United States reveal is that, behind the headlines, there is usually a large network all over the country that has been committing horrendous abuse, exploitation, and human rights violations that solicits massage parlors and other businesses. *The New York Times* reports the following statistics: much of the human trafficking occurs in those businesses that market themselves as something else while, in reality, they serve as a location for illegal prostitution. It is estimated that 9,000 such parlors exist across the U.S., and it is estimated to be a \$3 billion-a-year industry. In no way is this meant to target legal massage parlors that are doing great work.

As you will hear from the State Board of Cosmetology, they, too, have an interest in ensuring the parlors are legal and safe for the patrons in this industry. It does not only apply to that particular type of business. Sadly, Nevada is no exception to these issues. I had one officer share a story with me that they were called into a tax preparation service—yes, tax preparation. There was not a computer or calculator to be found, but there were eight beds and 11 Asian women hiding in a back storage room. You will see pictures and hear testimony of case studies that I hope will clearly define for this Committee exactly the kind of businesses and trafficking this bill is attempting to address. As we have discussed in recent hearings on child marriages, sexual abuse, and trafficking, much of the damage done to these victims is traumatic beyond measure and lasts a lifetime.

I asked for language to accomplish three things, and I believe we have done well with the input of many stakeholders in getting there. The three things are these: (1) to provide clarification in statute that goes after business owners who are directly involved in these illegal and exploitive activities; (2) to write it in such a way that it would not inadvertently capture unknowing business owners or groups that attempt to serve the victims of trafficking; and (3) to keep the victims in mind at all times during discussions to make sure it is placed in the trafficking statutes so that all of the available protections and services would still be made available to them.

I am going to have Director Callaway walk through each piece of the bill. Before he begins, I would like to start by pointing out a few things. First and foremost is the amendment ([Exhibit C](#)). If you have not already pulled the amendment off the Nevada Electronic Legislative Information System (NELIS), we will be working off the amended version of the bill. The beginning of the amendment, section 1, addresses *Nevada Revised Statutes* (NRS) Chapter 201, which is specific to issues of sex trafficking. Section 1, subsection 1 says,

"Except as otherwise authorized by law." There have been a number of questions, and understandably so, because there are a lot of issues regarding prostitution throughout our NRS chapters. I want to make sure the language is explicitly clear for the record that this is "except as otherwise authorized by law." This does not impact legal brothels in our state. This is specific to the human trafficking statutes that deal with illegal prostitution.

There have been questions about NRS Chapter 201—and I am certainly sensitive to these questions—regarding the victims and whether this attacks or targets them. In the chapter that deals with rebuttable presumptions, NRS 201.303 states that, for a victim of sex trafficking or facilitating sex trafficking, there is a rebuttable presumption that the person who committed the violation acted under duress, and that would also be included. I will ask law enforcement to expand on the screening process and what they do to make sure this is not about targeting victims.

I have heard from those who work in communities doing outreach and providing counseling and medical services to victims. This is in no way meant to create a burden for them or to capture them in this statute. The counselors will not be accused or convicted of trafficking if they are providing counseling, outreach, or support to these individuals.

There are always additional clarifications that can be helpful, and I will continue to work with stakeholders and this body to ensure we get clear language. I have had numerous meetings with law enforcement, the district attorneys, the Attorney General, public defenders, victims' advocates, the American Civil Liberties Union, representatives from the State Board of Cosmetology, and the business community. I want to thank them on the record for their input and for helping us get this language right.

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

This is a very important issue. We have identified that there exists a loophole in the law that allows—for lack of a better description—franchises of slavery and human trafficking to occur. Under current language in the law, it is very difficult to hold accountable the people who are running these businesses. Our hope with this bill is to close that loophole. In my opinion, someone who is running a business that has 25 young women in it being used for sex slavery under the front of a massage parlor, plumbing business, or tax preparation business is the worst kind of human trafficker.

I will go through the bill quickly. We have a friendly amendment for section 1. I will read the amendment that is intended to replace section 1. It is the product of work from the district attorneys' offices, along with the Nevada Resort Association. The whole intent is to make sure that someone who runs a legitimate business does not get caught up in this bill when prostitution activities are occurring on their property if they are not aware of it, or when they become aware of it they are taking steps to rectify the problem. Our goal is not to go after legitimate business owners. Our goal is to go after people who are engaged in illegal prostitution activity and making a profit from that activity under the guise of a false business.

The amendment reads:

Except as otherwise authorized by law, a person who owns, leases, operates, controls, or manages any business or private property, who knows or should know that prostitution activity is being conducted therein, and does not take reasonable efforts to abate the prostitution activity within thirty days, is guilty of advancing prostitution and shall be punished:

(a) Where physical force or the immediate threat of physical force is used, for a category C felony as provided in NRS 193.130.

(b) Where no physical force or immediate threat of physical force is used, for a category D felony as provided in NRS 193.130.

This is not to impact legal brothels in the state. It goes on to state:

As used in this section; "reasonable efforts to abate the prostitution activity" includes filing report(s) with law enforcement, allowing unrestricted, undercover operations by law enforcement, promoting ongoing education of employees, engaging in public awareness campaigns or using any other legally available means. "Prostitution activity" has the meaning ascribed to it in NRS 201.295.

Section 1, subsection 3 states:

A person is deemed to have knowledge of prostitution activity under section 1 if they were notified by law enforcement of three incidents of prostitution activity in their business or on their property within one hundred and eighty consecutive days.

We believe this language strikes a balance where it allows a legitimate business owner to take reasonable steps to abate the activity and stop the problem from occurring.

From a law enforcement standpoint, those businesses that are operating illegally and are a front for this type of activity are not going to knowingly work with law enforcement or allow them to do undercover operations within their facilities. They are not going to cooperate or provide education to the very girls they are trafficking. We believe this language protects legitimate businesses and at the same time helps us go after those folks who are operating illegally.

Section 3, subsection 1 of Assembly Bill 166 is a tweak to the existing language in the current law to state that "A person who knowingly accepts, receives, levies or appropriates any money or other valuable thing, without consideration, from the proceeds of a prostitute, is guilty of living from the earnings of a prostitute." We are clarifying that if there is force or immediate threat of force used, it is a category C felony. Where there is no physical force

or immediate threat of force used, it is a category D felony. The remainder of the bill proceeds to add that all the benefits and programs available for victims would be added to statute for victims of this particular crime.

Chairman Yeager:

There is an amendment on NELIS that is listed under A.B. 166—Proposed Amendment from Assemblywoman Tolles—which is what we were working off of. I think everything is the same until we get to the last couple of things you said about potentially adding earnings from the work of a prostitute. Is there another amendment besides the one on NELIS?

Chuck Callaway:

My understanding is that the amendment is intended to replace section 1 of the bill, but in the original language section 3 is the language regarding living from the earnings of a prostitute. That is not part of the amendment that was submitted.

Chairman Yeager:

So the record is clear, the amendment replaces section 1, but everything else in the original bill is also intended to move forward as part of the bill.

Chuck Callaway:

That is correct. My understanding based on the conversations that we have had is that section 1 would be replaced by the amendment and the remainder of the bill would stay as written.

Chairman Yeager:

The clarification is helpful for the members and so we have a good record of the intent.

Nate Chio, Lieutenant, Special Investigations Section, Las Vegas Metropolitan Police Department:

I am the lieutenant in charge of the Special Investigations Section (SIS) for the Las Vegas Metropolitan Police Department (LVMPD). The SIS is the investigative unit within the department that regulates and investigates privileged and regulated business licenses. Massage parlors are required to have this type of license by both Clark County and the City of Las Vegas Code of Ordinances. Historically, the massage parlor industry has been plagued by illegal prostitution and sex trafficking.

Prosecution of business owners is difficult for both the Clark County District Attorney's Office and the Office of the Attorney General due to existing Nevada laws requiring the alleged prostitute/victim to testify against the owner of the business. Without the testimony of a victim, the existing Nevada laws on pandering and sex trafficking, NRS 201.300, living from earnings of a prostitute; NRS 201.320; and placing person in a house of prostitution, NRS 201.360, sexual trafficking cannot be proven beyond a reasonable doubt. The alleged prostitutes and victims rarely give any type of statement. They move out of the jurisdiction, or they refuse to testify since they are typically only charged with misdemeanor crimes resulting in a fine for soliciting prostitution. The owners of these establishments claim

ignorance of the criminal activity stating the "masseuses" are independent contractors and are not true employees of the business.

Typically, these businesses are staffed by predominantly Asian women who speak limited English and may or may not be in the country illegally. These women usually live on the premises in small, cramped quarters to be available for customers 24 hours a day. During some interviews, the victims state they prefer to be prostitutes here in the United States, where they can make some money, rather than be in their home country where they come from impoverished conditions. They are afraid to talk to the police in fear of losing their source of income. The owners of these businesses prey upon these girls' vulnerability and exploit them for their own monetary gain. The prostitutes make a small percentage of each sex act, with the majority of the money going to the business owner/manager. There is a significant amount of money made by the owners of these establishments. In one case alone, SIS seized in excess of \$170,000 of suspected illegal profits.

To add another layer of frustration for the police department and the state of Nevada, with the change in NRS 179.1173 from a prior legislative session regarding money seizures, the money seized during the investigation is given back to the suspect within seven days upon dismissal of the charges. Before then, seizures during a criminal investigation were a separate civil hearing. The quagmire faced by law enforcement and the district attorney's office is that the owners of these businesses do not face any real repercussions either in criminal court or in civil court for their involvement in the exploitation of these women. This perpetuates the cycle of victimization of the women employed in these businesses, and the criminal activities by the owner/managers of these illegal businesses continue.

When an arrest is made in a business for soliciting prostitution, the city or county business license entity is advised. The city or county might take action on the license as a result. Typically, these agencies want to see a pattern of arrests. Even when this pattern is established and LVMPD makes multiple arrests out of a business, the city or county still may not take action on the license. If action is taken and the business license is revoked, it is common for a friend, relative, or employee who is associated with the previous business to immediately apply for a license at the same location under the guise of new management. As an alternative, they may apply for a general license, such as a nail salon or tanning salon, which can simply be done online in the county. There are no checks and balances or suitability investigations by the city or county for the use of general business licenses. Instead of being identified at the time of license application, it has been continually incumbent upon LVMPD to make these associations and establish the pattern necessary for license denial or revocation. Even then, it is subjective as to whether city or county licensing will take enforcement action. It is a constant revolving door and never-ending battle to shut a business down and have a new one open up immediately in its place with the same illegal activity occurring.

If the owners were charged with felony crimes and held accountable without the victims having to testify or come forward publicly, this would force the hand of the city or county to take action on the licenses. The ineffectiveness of existing legislation within the state to address this problem—which has occurred for many years—has led to this industry spiraling

out of control despite the efforts of LVMPD. Assembly Bill 166 would address this and assist LVMPD and the Clark County District Attorney's Office to hold these suspects accountable and stop the cycle of victimization of the women trapped in this industry.

The following is a case study that my section just completed. It was a business named Top Spa located at 4850 West Flamingo Road, Las Vegas, Nevada. Beginning in 2010, SIS and LVMPD Vice began investigating the owner of a local massage parlor, Suree Srikuruwal, and managed by her daughter Sasinee Yanyingyong. Over the course of the investigation, several acts of soliciting prostitution were committed by Sasinee and her employees resulting in arrests. Suree was put on notice by SIS of the illegal activity occurring at the business. Suree closed the original business named Truly Spa and reopened under a new name—Top Spa, located at 4850 West Flamingo Road—using a straw owner.

In October 2018, multiple search warrants were served at the business, the residence of Suree and Sasinee, and on several bank accounts. Multiple suspected prostitutes were at the business during the service of the search warrant. The LVMPD recovered approximately \$175,000, condoms, lubricants, journals, and cellular and other electronic storage devices, which all provided evidence of prostitution activity at the business. Detectives attempted to interview multiple suspects, including Suree and Sasinee. None of the females located at the business would speak with officers about the illegal activity occurring at the business. The case is currently going through the Attorney General's Office for prosecution. The challenge for the Attorney General's Office will be to have one of the employees testify if this case goes to trial. As previously stated, the refusal of these prostitutes/victims to give a statement out of fear and/or to testify to police lies at the heart of law enforcement's frustration and is the basis for this proposal.

I have attached to this presentation several pictures that are in the packet ([Exhibit D](#)). The first picture is the living conditions that we saw during the service of the search warrant. It is a small room, approximately 10 feet by 15 feet with six beds where the prostitutes and victims were living. You can see the hidden container that was used to store the condoms for customers' use [page 2, top]. There is another picture of the living conditions [page 2, bottom]. The last pictures are of the money that was seized at the business [page 3], including one picture where the money was found in the business bill counter [page 4].

For law enforcement, this bill is very important. As the commander in charge of special investigations, this is a significant problem that we are trying to address with our partners in both the city and the county. This bill will give us the means to properly target the business owners who are exploiting the victims of the sex trafficking industry. It will also protect the victims who are trapped in this industry from not having to publicly testify against these owners. They will be treated more as witnesses by law enforcement rather than suspects.

Mary McElhone, Deputy Planning Director, Department of Planning, City of Las Vegas:

One of my responsibilities is business licensing. During the last several years, the City of Las Vegas has made it a priority to address human trafficking and to close down businesses

that provide fronts for illegal prostitution rings. I have several exhibits ([Exhibit E](#)) that show what the City of Las Vegas has been dealing with over the last four years.

Look at Exhibit 1 [pages 2-7] which is about Venus Beauty Spa. Per their application, this is not a massage establishment but a cosmetology establishment, located on Las Vegas Boulevard. As you will see in the first picture [page 3], the reception area looks very nice. It is nicely furnished and well decorated. It looks like a legitimate, upstanding business. The second picture [page 4] shows an actual massage room: again, nicely furnished with what appears to be clean sheets and a great place to have a massage. One would never suspect that human trafficking is going on at this location. After Metro received a complaint that clients were offered sex after paying for a massage, the Las Vegas Metropolitan Police Department conducted an undercover investigation. On March 23, 2017, an undercover detective went in and was solicited for sexual acts. Officers found six females who spoke little English living at the location. Those are the pictures on pages 5 and 6 of the exhibit.

The photos are very shocking in comparison to the main reception area. They were living out of this back room. A refrigerator was found stocked with food, liquor on the premises, personal hygiene items, and women's clothing throughout the location. Although generally fearful for their lives to speak with law enforcement, most of these girls, when interviewed, admitted that they had been soliciting for sexual acts. The last picture in Exhibit 1 [page 7] shows seven girls' names and the money that each of them had brought in for the evening. Full sexual services at this location run as high as \$500.

The last exhibit that I would like to talk about is from Sun City Spa [pages 8-17]. This is located behind the Strip on Paradise Road. As you can see from the first picture [page 9], the reception area looks very respectable. There are magazines located on the table in this area. But an undercover operation was set up by Metro when our business license officers detected Internet advertisements that appeared to be soliciting for sexual acts. The operation was set up for August 8, 2017, and the undercover detective was solicited for prostitution. The second picture in this exhibit [page 10] shows the back room in this commercial location where the girls were living. There are three beds in this photo with a rug hanging from the ceiling for privacy. The third photo [page 11] shows a shoe rack. This shows clear evidence that they are living here. The fourth photo [page 12] shows their break room or kitchen area where there is food on the counter and cooking items. The next two photos [pages 13 and 14] show how well stocked the refrigerator is, so they are definitely living in this location.

There is another photo [page 15] that shows a tip sheet. This tip sheet appears to be for taxicab drivers. Taxi drivers are often tipped large sums of money to drop off clients for sexual services. In the case of Venus Spa—the one I spoke of earlier—the undercover detective was actually dropped off by another undercover detective posing as a taxi driver. He received a \$200 tip for dropping off the other undercover detective.

The next photo in Exhibit 2 [page 16] shows a shoebox with thousands of dollars in it. Locations such as these are often involved in other criminal activity. At this location, \$40,000 in cash was found. The location was suspected of either being a hub for other illegal

trafficking operations or possibly other illegal operations like laundering money. The next picture [page 17] shows stolen watches. This was also uncovered at that location. We were not sure if these were taken from the clientele while they were receiving services or from other illegal operations.

Exhibit 3 [pages 18-21] encompasses three massage establishments that the City of Las Vegas closed down because of prostitution and human trafficking. The first photo [page 19] is from Thai Day Spa, and the reason I show you this photo is that oftentimes they actually live out of the massage room. In this photo, you can see where they are set up on two of the massage beds and using those for beds. The second and third photos [pages 20 and 21] are from two different massage establishments called Asian Flower and Lotus Flower. These are both on West Sahara Avenue, not far from each other. The locations are owned and operated by the same person. These locations had ten solicitations for prostitution with an undercover detective before we finally closed them down. I want you to notice the large sum of cash in the third picture, and I assure you those are not \$1 bills.

We have gone into these locations and found individuals with no identification or passports. Most of them speak limited English or no English at all. They are very afraid to speak to law enforcement and very fearful for their lives. One girl, while being interviewed by a detective and a license officer, told them she was being held against her will. Her passport and her cell phone were taken. When the officer tried to assist, she stopped talking, refused to help, and stated, "You do not understand. If I talk, they will kill me." It is very difficult to get these girls to accept help.

The last page [page 22] is Exhibit 4, which shows how proactive the City of Las Vegas has been. Since 2014 we have had 18 businesses that have had their licenses revoked, denied, or closed down due to solicitation of prostitution and human trafficking concerns. Unfortunately, the person who solicits gets the criminal charge. In the end, oftentimes there is little if anything done to the actual owner or the people behind this criminal activity. We bring them before the city council and the licenses get revoked. Sometimes we give them a small civil fine, which is allowed through the NRS. The fines are usually not over \$5,000 and normally do not get paid. Over the last five years we have issued a total of \$103,000 in fines.

The owners on record are not normally the real owners; they are just fronts. In many cases of closed locations, the people behind this usually find someone else who can pass the background check and hire them as a new front. The business then reopens, usually under a new name, and then we are back at it again. The City of Las Vegas is in support of this bill since it will help prosecute the real criminals behind the human trafficking.

Lois Tarkanian, Mayor Pro Tem, City of Las Vegas:

I served as a councilperson for over 14 years in Las Vegas. One of the first problems that came to me as a councilperson was a complaint from a neighborhood that there was a prostitution parlor operating across the street from them. I innocently thought that I would just go and talk with them and have a look at things to see how it is. A member of my staff

and I went to this massage parlor but could not get in. I could not get in; they did not want anyone such as me to get in. They wanted customers. That was my first inkling that something was not quite right. We tried to correct the problem, but it was very difficult. It took us over four years, with great cooperation with Metro, to be able to stop what was happening there. During those four years, they thumbed their noses at us. They were very arrogant. They not only continued what they were doing in the front of the building, but they also bought a home across the alley in back of them. That is where they began stashing attractive young girls. We had to continue working at it, as Mary has noted. Some of those pictures were taken from places in my ward.

You go after them and get them, but their license is a special use permit that goes with the property. Once they leave, they can sell it to someone else who can use the property for the same type of business. This is supposedly a legitimate business. What occurs is they have numerous friends and relatives, and it is very, very difficult to track down everything to protect the rights of the people and at the same time protect the city from that type of activity. Eventually, Metro was able to do a raid, catch them, and stop them. The next thing we knew, they had gone to another ward. They take the whole business and move it to another ward.

We need help in making this stronger; four years is a long time. It takes a lot of resources. We need all of the help we can get from the Legislature to make the rules and laws, as we are trying to do here in Assembly Bill 166, so that we can take limited resources and save some of these young women. It is very important, and I urge you to pass the bill.

I want to mention a couple of other things. I have a lot of prostitution situations in the ward I represent, Ward 1. I have Sahara Avenue and Charleston Boulevard, two large arterials running through Las Vegas. We have had a situation where a woman came to get a business going, but the gentleman with her would not let her talk much. I fell for the situation at first. Then they did a raid and found that—even with the extra chance of believing what they were telling me—it turned out they were not what they said they were. Metro and the city work closely together, and that is the only reason we succeed.

I have a friend who recently purchased a massage parlor. It was in the county. He came to me and stated that he was in a very difficult situation. This individual found out that prostitution was occurring in his business. He did a hands-on thing with the business and found out from his manager that it happens everywhere. My friend asked if someone checks these things since it is illegal. The manager said that it was all right because he knew how to handle it. The folks who have these parlors really work together. It is very difficult to pin down. The manager was making a good amount of money until she was fired. My friend sold the business because he could not control all of it. He was an innocent person buying what he thought was a legitimate business.

It is very pervasive and wrong. These young ladies do not deserve to be treated the way they are. I urge you to pass A.B. 166.

Darin Balaam, Sheriff, Washoe County:

As a newly elected sheriff, I am determined to use my office to support important legislation that supports ongoing efforts at the local level that combat human and sex trafficking. I made a promise to my community to commit the resources of the sheriff's office to join with those who are already working hard to bring light to this issue, to bring justice to those who prey on innocent lives of human beings, and to help victims through the tragedy and suffering caused by human and sex trafficking.

In light of that commitment, I am proud to be here in support of Assembly Bill 166. Assemblywoman Tolles' bill makes it a crime for advancing prostitution. I firmly believe this bill will provide a much-needed tool for law enforcement to help victims of human and sex trafficking, as well as help law enforcement target those individuals who take advantage of others for their own personal gain.

Laura Conklin, Sergeant, Reno Police Department:

I am reading a letter on behalf of Reno Mayor Hillary L. Schieve ([Exhibit F](#)):

Last year I was pleased to spearhead the Trafficking Task Force with Assemblywoman Tolles. As we have learned more and more about this terrible practice, its roots, causes, and frankly its enablers. Human trafficking flourishes in darkness, a darkness that grows when any of us turn a blind eye to that which occurs on our streets and behind closed doors.

We cannot abide a system that puts young women into a system designed to disadvantage them and degrade their value. Nowhere more than Reno have our allies in the business community stepped up to make the statement this is unacceptable. But it would be naïve to say there are no bad actors. And while I am positive that Reno's best days are ahead, and I think our future is bright, but I am anything but naïve.

When it comes to these few bad actors, our law enforcement professionals should be given access to the best tools available. Existing law allows a person to turn a blind eye, to disingenuously throw their hands up and claim ignorance of things going on under their own nose.

Even one more is far too many women and girls being pushed through this system. This bill will not solve the problem overnight, but it creates options for law enforcement to build stronger cases against those individuals who create the darkness where this can grow. Reno is no place for that darkness.

I am proud to support Assembly Bill 166, and grateful for Assemblywoman Tolles' leadership on this matter. I am also eternally grateful for all of the members of the Trafficking Task Force who have come together to work on this very important initiative.

These activities are a scourge on our streets and a blight on our state. I hope you will consider giving our law enforcement officials the tools they need.

Sincerely, Hillary L. Schieve, Mayor

Assemblyman Watts:

I would like clarity on your intentions with this bill. Can you expand a little more on the loophole? It sounds as if it is directed toward businesses. It would be helpful if you explained how NRS 201.301 does not apply in these situations. Can you also expand upon the decision to orient the language in the amendment around prostitution as opposed to human trafficking? It sounds as if these enterprises are more like human trafficking.

Chuck Callaway:

I will speak to the second question first. The Clark County District Attorney's Office helped with drafting this amendment. When they come up to testify, they can probably better explain why this specific language was chosen.

The difficulty is that the girls who are trafficked in these businesses are too afraid to cooperate with law enforcement. Under current law, when they do not cooperate with us, it is difficult to prosecute the business owner who is facilitating their situation. For all intents and purposes, the business owner is their trafficker. When the victim does not cooperate with law enforcement, the loophole prevents law enforcement from going after that business owner.

Nate Chio:

The loophole we are trying to close is the feigned ignorance of the business owners. Without the testimony of victims against the business owners, the owners can claim they had no idea what was going on, that they were trying to run a legitimate business, and the alleged prostitute was just an independent contractor. This legislation closes the loophole. We put the owners on notice that this activity is going on at their business, including an abatement clause that the owner knows or should have known that prostitution activities were happening. It gives them the opportunity to abate that activity, as all legitimate businesses currently do. It is only those illegal businesses that will be targeted by Assembly Bill 166.

Assemblywoman Tolles:

Language matters, and I struggled with the use of the word and the interchange between "prostitute," "prostitution," and "sex-trafficking victim." I had an excellent conversation with an advocate regarding this and why I could not just remove that word. I am extremely sensitive to that as well.

We face the challenge that throughout the statutes the term that is used—prostitute—is what is used to define the activity of exchanging sex acts for money. If we were to change that word, we would have to change it throughout every statute that uses that definition. I suggest that would be a much larger conversation than what this bill is tailored to address in a very specific manner. I recognize that oftentimes the words we use connote other meanings that

can be interpreted as a judgment, but that is not the intent of this bill. We have to work with the language in the NRS.

Assemblywoman Peters:

I am looking at the amendment and the provisions regarding the charges of physical force and immediate threat, used or not used. How do you determine whether physical threat is present? If you raid the business but do not see physical beatings, how do you know? I would also be interested in hearing the difference between that and emotional and mental manipulation. Why do those two not carry the same charge?

Chuck Callaway:

I wish there was a way we could put emotional abuse in the statute because it is just as important as physical abuse. I do not know how law enforcement agencies investigating these types of crimes could prove that without extensive therapy or something from a doctor saying the person is documenting that they have suffered abuse. Unfortunately, in most cases it would be very difficult to prove—without cooperation from the victim—that there was a threat, force, or violence used to intimidate. We know it occurs. We know that deportation and being sent back to their home country, or being kicked out onto the street, is held over their heads. As stated during the testimony, they are told they will be killed if they cooperate with law enforcement. Unless the victim cooperates with us and tells us that she or her life was threatened or that she was beaten repeatedly, it would be difficult to charge the category C. In most cases where the victim does not cooperate, we would end up charging the category D felony since we cannot prove the force or fear component.

Assemblywoman Tolles:

I have some data from my research that was given to me by the victims themselves. We have a resource called the Human Trafficking Hotline. It is a national hotline by which we can gather information from the calls—specifically through the text messaging mechanism—to determine what the victims themselves are telling us. We gathered data from 10,615 unique individuals on the hotline from 2017. They were identified as being unique out of the 40,000-plus total calls. There were two main methods of force, fraud, and coercion reported and gathered through these phone calls. The first was isolation, including confinement. You could see that in the evidence pictures that were presented earlier. That represented 2,574 unique individuals. These were only people who knew about the hotline or finally felt compelled to call in. The second-highest reported use of force, fraud, and coercion was emotional abuse from 2,370 unique individuals. I am using those words intentionally because they are human beings. These are lives that matter. Economic abuse represented 2,049 individuals. Threats of any kind were reported by 1,880 individuals, and nonsexual physical abuse was reported by 1,652 individuals. That is why it is important to delineate between physical markings of abuse on someone's body versus recognizing the reported number of other methods of nonphysical abuse that are used to entrap individuals.

Assemblywoman Cohen:

You said we are keeping the new language in section 3. Everyone who lives in Las Vegas has a story about their friend's brother who is a bartender in one of the bars in one of the

hotels. We hear the stories about the prostitutes, and everyone knows who the prostitutes are and what they are doing. Are we capturing the bartender or the valet worker who takes tips from a known prostitute at the casinos?

Chuck Callaway:

No, that is not the intent of this bill. In fact, my own brother is a valet worker at one of the hotels, and I would certainly not want him to be subject to this for receiving a tip. The intent is to capture the panderer, the trafficker, and even the cab driver in the scenario that was described earlier who was facilitating prostitution by taking the customer to the trafficked victim for money. It is not about the bartender who receives a tip from a girl who happens to be a prostitute; that is not the intent of the language.

Most of section 3 is existing language. We are defining "living from the earnings of a prostitute" and then breaking it down into the two categories. Before it was just a category D, but we are adding the force or threat in there for the category C. There is currently a statute for living off the earnings of a prostitute.

Assemblywoman Cohen:

It still concerns me that they cannot capture those people.

Chuck Callaway:

In my career of 30 years in law enforcement, I am not aware of a bartender or valet person ever being cited or arrested for living off the earnings of a prostitute.

Assemblywoman Cohen:

Assemblywoman Tolles and I discussed this yesterday. I have a concern for the people in the trafficking organization. There are people who are not on the top rung and may be working their way up the ladder, but who started out being trafficked. Maybe they were brought in when very young. They may be working as henchmen. I want to make sure we are not going after that person instead of the people who are really profiting. They may be profiting, but they are not the one who started the organization and may in many ways still be victims. I just want to make sure we are not going after them. Please address that.

Chuck Callaway:

We currently have a process in place through our human trafficking section. Any person who is arrested for a vice-related crime is screened to determine if she is a victim. If we find through the screening process that they are victims, they are funneled into the appropriate resources. In existing law, there are statutes that allow for a victim of human trafficking to receive resources and help to get out of that lifestyle. Any criminal charges against them are then sealed or vacated. In the course of an investigation and screening process, if we come across a person whom we perceive to be the business owner who was facilitating prostitution and an arrest was made, we would identify the person as a victim. They have been groomed and brought up through the human trafficking world as a victim, then put into the position of operating that business. We would funnel them into the program so they could get treatment.

Ultimately, they would get out of that lifestyle and have criminal charges against them sealed or vacated.

Assemblywoman Tolles:

I concur with that. I looked into this myself, being conscious about addressing the needs of victims in these scenarios. Oftentimes those victims are groomed into higher levels of participation in these sex trafficking rings. I believe NRS 201.303 on rebuttable presumption does apply.

Concerning the interaction of law enforcement and this process, going back to 2017 and the 10,615 victims that were uniquely identified, the No. 1 point of access to potential help for them was interaction with family and friends. They were able to get the help they needed. The No. 2 most frequent point of interaction with getting assistance was with law enforcement and the criminal justice system. That speaks to the changing perception and interaction with the law enforcement community for individuals accessing resources, help, and the protections that are activated in this statute, and No. 3 was access to health services. This is not meant to apply to any organizations or outreaches that are doing counseling or health resource—which we recognize are critical partners in this process—in helping these individuals.

Assemblywoman Nguyen:

Trying to target the right individuals has been the key in this. I have had cases where Metro and the district attorney's office have gotten to the owners of massage parlors through racketeering statutes. Is there any reason that is not a viable option?

Chuck Callaway:

It is always an option. When we come across statutes such as this where there is a loophole in the law and it is difficult to get a prosecution against someone we know is facilitating and encouraging this activity, our detectives work with the district attorney's office to look at all options. Are there federal statutes we can use? Are there racketeering laws that we can use? Often the statutes require a different level of investigative resources. It is very important to have a specific statute with this type of crime. When the district attorneys come up to testify, they might be able to better explain when we would be able to prosecute a racketeering case in these situations. We are always looking for ways to address the issue. If there are elements of the crime that meet racketeering and we can charge that, we would. In many of these cases, we do not reach the level of elements of the crime necessary to charge a racketeering offense.

Assemblywoman Nguyen:

Looking at the section on reasonable efforts to abate, do you have any concerns that it does not go far enough? It seems so easy to make reasonable efforts to abate that it gives them an easy way out.

Chuck Callaway:

From a law enforcement perspective, the legislative process is always a compromise. Working with, for example, the hotel industry, or other entities that may have a concern with the language, you get to a point where you just agree on something. My gut instinct is that a business owner who knows this is occurring—but chooses to ignore it—would let law enforcement on the property, send out a cease and desist flyer to his employees, and claim to have done everything in his power to stop it. I also have a level of confidence that the businesses that we are going after—the illegal, commercial trafficking businesses operating under the guise of another business—will not take the steps that are outlined here. They are not going to openly allow law enforcement to come in for an undercover operation. They do not want to provide resources or education to the girls they are victimizing. Under this language, we will be able to hold those egregious offenders accountable and, at the same time, strike the balance where a legitimate business owner who is trying to rectify this problem is not caught up in this.

Assemblywoman Nguyen:

I have concerns about this. I know Assemblywoman Tolles was taking steps to talk to the appropriate stakeholders to figure this out. We are talking about some of the massage parlors and other places that are operating separate from what they are licensed for. I am concerned for some of the other businesses, like hotels on the Strip and some of the low-income weekly hotels that have had incidents of prostitution on their property. Is it per room, per facility, or per structure? Some of those go outside of the intent of what you are looking to accomplish. How have you worked that out with the stakeholders?

Assemblywoman Tolles:

We have had many conversations, and I have sought after and valued the input of stakeholders. It was out of that expressed commitment to identifying the stakeholders that struck the right balance. How do we write the law tightly enough to give the resources and tools needed to prosecute those individuals who are using their business as a front? How do we document the ability for businesses to demonstrate that they are actively cooperating and trying to abate this activity while protecting people from being victimized through their businesses?

I am very sensitive to the business community, landlords, tenants, and commercial property owners and appreciate the partnerships. The resort community made a public stand to address this issue. Most of the other businesses want to show that they, too, are cooperating. That is how we came up with the language for reasonable efforts to abate that includes the cooperation that Director Callaway spoke of. We have seen businesses where this commonly occurs on their property do more to engage in education and in public awareness campaigns, which can help provide a chilling effect. The goal is not to go after those businesses that we recognize may not be able to control everything that happens on their property, especially the larger ones. We do not want to create a situation where a manager knocks on the door of a hotel room and asks if they are exchanging money. That is not realistic nor what this is intending to capture, nor would that be appropriate. This is truly intended to narrowly go after those who are directly involved.

I point you to the case studies that were presented at the beginning of this hearing. You saw multiple layers of evidence of this activity directly taking place. Abuses and human rights violations occurred within that business, and they are not cooperating.

Assemblywoman Hansen:

To delineate between the types of businesses we have been focusing on this morning and the large resorts, the intent of this bill is to go after the businesses that do not have the type of oversight that big gaming does. There are a lot of layers of oversight that are in other businesses. It looks as if a little niche of the market falls into the cracks because there is not enough oversight. Is that correct?

Chuck Callaway:

You are absolutely correct. To put into perspective what we are talking about, there is a huge difference between a prostitute walking in off the street and soliciting someone in the lounge of a hotel and the business that is supposedly going to do your taxes. The hotel owners may know this occurs, but they have security and cameras, work with law enforcement, have a black book of pimps and human traffickers, have facial recognition technology for people who come in and out of the hotel, and they attend security meetings with law enforcement. There are federal programs that provide training to hotel workers so they can engage in trying to stop this activity. There is a huge difference between that and the 30 beds and girls in the back being sex trafficked. The owner knows this is occurring. As Mayor pro tem Tarkanian said, when someone comes to the door who is not seeking sex, they lock the door and do not let them in. Those are the two distinct features we have here. We are not focused on the first example but on the latter.

Chairman Yeager:

Looking at the amendment, section 1, subsection 2(a), under the definition of "reasonable efforts to abate the prostitution activity," there are a number of things that are listed there. Then it says "or using any other legally available means." Does a business owner have to do all of those things that are listed before the "or" to get the benefit of reasonable efforts? Does he only have to do one of those things?

Chuck Callaway:

We intentionally left this section vague to provide an avenue for legitimate businesses to take action against this activity occurring. I am comfortable that the illegal businesses we are talking about are not going to make any of these efforts. Theoretically, if a business owner could show that he made any one of these efforts to try to stop the problem, that would be considered making an effort.

Chairman Yeager:

We will move to support testimony at this point. We have a lot of people signed in who want to speak on this bill, so if you are speaking, I ask that you limit your comments to two minutes. I will be timing you. If you have written comments, feel free to submit those to our committee secretary. There is no need to read them, but you can summarize your comments.

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

We are in support of Assembly Bill 166. It is reasonable to conclude that the majority of this activity will occur in large population centers such as Clark and Washoe Counties; however, I suggest that it is also reasonable that these activities are occurring across the state and in rural jurisdictions. This is also reasonable in the travel corridors, such as Interstate 80 and U.S. Highway 95. This bill will help our law enforcement professionals across the state in their fight against human trafficking.

John T. Jones, Jr., representing Nevada District Attorneys Association:

In the Clark County District Attorney's Office specifically, we were finding that some of the cases submitted to us by our law enforcement agencies were not totally fitting within the sex trafficking and pandering statutes that are on the books. The best way to describe it is—and this goes to Assemblyman Watts' question—pandering or facilitating prostitution is very person-centric. In other words, you need a cooperating witness to help prove these cases. If you do not have one, they are very difficult to prove. For lack of a better term, what we are doing with this new statute is moving it to an activity-centric type of statute. We could put the owner on notice through notice to the business or through citations that were issued to the business and prove it that way. The references in the racketeering statute to our sex trafficking statutes require a cooperating witness. When we do not have that, it is very difficult to prove.

I am happy to answer any questions regarding why we ended up with the language that we did. Of course, I am willing to continue to work with the others to fine-tune the language. We want everyone to be comfortable with what we are doing.

Michael Cathcart, representing City of Henderson:

We want to concur with the comments made by the previous public agencies and, in particular, the Cities of Las Vegas and Reno. We believe this will be an added tool for our law enforcement agencies. We support the bill.

Mike Dyer, Director, Nevada Catholic Conference:

For informational purposes, the Nevada Catholic Conference is the method by which the bishops and the dioceses of Las Vegas and Reno comment on statewide issues. For the record, the bishops strongly support this legislation.

William Ledford, Director of Advocacy, Lutheran Engagement Advocacy in Nevada:

The national church actually has a social statement about commercial sexual exploitation. Based on that statement, we support, and have historically supported, any legislation dealing with the issue of sex trafficking. We support this bill.

Jessica Adair, Chief of Staff, Office of the Attorney General:

On behalf of Attorney General Ford, I am proud to offer our support for A.B. 166. This bill provides a critical and missing tool for law enforcement to tackle businesses that are known to be fronts for illegal prostitution and profiting from human trafficking. As Metro identified, victimless prosecutions are ideal because of the inherent fear and trauma involved

in lengthy investigations and prosecutions for those who have been trafficked. This bill shifts the burden from requiring victims to testify against their traffickers to the burden on law enforcement to show it provided notice multiple times that illegal prostitution is occurring and the businesses continue to profit from that. Importantly, it would encourage businesses to prevent and abate illegal prostitution and trafficking.

This bill aligns with our office's victim-centered philosophy to target perpetrators of trafficking while upholding due process. It has the full support of the Attorney General's Office.

Sara Chalhagian, representing Dignity Health-St. Rose Dominican:

We formally support Assembly Bill 166 in its amended version. Having these statutes change their place in the trafficking section of the *Nevada Revised Statutes* will allow victims to have the benefits from the funding programs and services that can help them get to survivorhood. Dignity Health's Director of Public Policy, Katie Ryan, has submitted a letter of support ([Exhibit G](#)). I encourage you to read it.

I would like to highlight why Dignity has decided to support this measure. Compelled by their healing mission, St. Rose is committed to being part of the solution, and human trafficking is one of various community health issues to which they dedicate their resources. Their frontline providers bear witness to the suffering of trafficked victims who enter their emergency departments and birth centers looking to Dignity for compassionate care and a way forward. To date, Dignity Health has invested over \$1 million to develop and implement their survivor-led and survivor-informed Human Trafficking Response Program. By leadership and example, they hope to encourage others in health care and government to take bold actions to integrate an effective response to human trafficking. We request your support on this bill and for you to vote, "Yes."

Joelle Gutman, Government Affairs Liaison, Office of the District Health Officer, Washoe County Health District:

We are in support of A.B. 166. The Washoe County Health District provides sexual health services in our communities for individuals who are at high risk for infection and transmission of HIV and other sexually transmitted diseases. Partnerships with community businesses and agencies allow the Health District to strategically place services in areas that have a high concentration of high-risk populations. Providing mobile outreach services removes barriers to care by meeting individuals where they are. Outreaches are opportunities for individuals to receive referrals to other health district and community services, including family planning, immunizations, primary health care, behavioral health, and social services. Offering free, accessible, and nonjudgmental services shows our most vulnerable community members that we are committed to disease prevention and health promotion.

Kay Landwehr, President, House of the Rising Sun:

This bill is an answer to our prayers.

Marlene Lockard, representing Nevada Women's Lobby:

The Women's Lobby strongly supports this measure. Thank you for working with us and clarifying some language, especially the explanation of the use of "prostitution" throughout the bill. We want to be on record in support of this bill.

Kimberly Mull, Private Citizen, Las Vegas, Nevada:

I am here as a survivor of sex trafficking ([Exhibit H](#)). Thank you for working with me on the amendment and for making it more victim friendly by ensuring we take that into account.

When discussing sex trafficking bills, I usually tell you not to think about the movie *Taken* or the show *Law and Order-SVU* or any of those other television shows, but this is a scenario where you need to think about that. This is very much for these women in illicit massage businesses. The victims that I have worked with during the last ten years are the ones who scare me. These are the things I have heard about and the situations I have dealt with that make me beyond horrified. We are talking about international organized crime, and we are talking about women being shipped over here in shipping containers. These women are coming from China and South Korea and do not speak English. They get here without knowing what their rights are. They know they can easily be killed and replaced, and no one will ever know.

This is a very important bill. I hope you will pass it. If you need more information about case studies or such, I will be happy to meet with you.

Gary Landry, Executive Director, State Board of Cosmetology:

I am here to testify in favor of Assembly Bill 166 ([Exhibit I](#)). The State Board of Cosmetology authorized me to take action for victims and to review nonviolent felonies for them to be processed successfully. Since implementation of this policy guideline ([Exhibit J](#)), I have not denied any person with a nonviolent felony conviction from entering school or receiving their license. As of March 1, 2019, none of the people granted entry into the school or given a license have been convicted of another felony to our knowledge. While that is very good, what we do lack is the ability to prosecute the perpetrators, the people who are running these salons. We have run into that situation while working with Metro and through other avenues. If this law gives us the ability to affect and get to the perpetrators, we can work with Metro in trying to eliminate it.

Bryan Wachter, representing Retail Association of Nevada:

We are here in support of A.B. 166, with the amendment. It is very clear where the balance is. There is some remedy that a business can do for an outspoken, tangible result of their actions towards stopping this type of activity at their locations. This is the vast exception for retailers, and we want to do our part to ensure Metro has the tools to go after this problem.

Janine Hansen, State President, Nevada Families for Freedom:

Years ago I was asked by National Eagle Forum to be on the national television show, "Phil Donahue," on this particular issue. I was unfamiliar with that issue, even growing up in

Nevada. That opened my mind. I feel that this bill is very important because it goes after those who exploit vulnerable women.

One of the things in the studies that I did that most impressed me—I actually found this repeated in a journal—was from 1984, much before its time. It said that prostitutes and victims of exploitation and abuse reported that almost 80 to 85 percent of those seen by agencies were sexually abused in their own homes initially. This should fill us with compassion for those who are abused and exploited. We support this bill and appreciate that it will address those who exploit these vulnerable women.

Chairman Yeager:

Is there anyone else in support of the bill here in Carson City or in Las Vegas? I do not see additional support so we will take opposition, both here and in Las Vegas.

Stephannie Tucker, Private Citizen, Las Vegas, Nevada:

I work with sex workers through Gender Justice Nevada. It is clear to me that none of you have spoken to any sex workers. When I hear the language in this bill, I can tell that sex workers have not been considered. I am here because a lot of these people do not have a voice with you all. The other part of this is, if you push people out of these spaces—out of casinos and bars—and you make people afraid to have them in their facility or fearful that they might be on their property, or if you make people suspicious, or make them report and inform on others, you will push them into the streets. Sex workers are already being pushed into the streets because of SESTA/FOSTA [Stop Enabling Sex Traffickers Act/Fight Online Sex Trafficking Act]. The most dangerous place for sex workers is the street, where they are likely to be assaulted, raped, or abused. The World Health Organization, the United Nations, and Amnesty International all recommend decriminalization. I do not understand why Nevada is pushing for further criminalization that harms sex workers. That would put more people in prison, give more people felonies, and "make" honest, innocent business owners because that is who will be caught up in this. It also allocates more money to prison systems.

Caitlin Gwin, Private Citizen, Las Vegas, Nevada:

I am against this proposed bill. It is redundant, unnecessary, and will bring harm to the most marginalized members of our communities. I want to give you a broader understanding of who engages in sex work and why. There is a general misconception that all sex workers are victims of coercion and trafficking. In actuality, the majority of sex workers do their job consensually and out of free choice. Often it is their best or only option. People of color, persons with disabilities, persons with diverse sex gender identity, single parents, and those who lack formal education are most likely to engage in circumstance-driven sex work. Further arresting, charging, and creating expenses for sex workers only ensures they will have to continue in the industry. If you really desire an end to circumstantial and survival sex work, you would create laws that allow these people to work safely, not shoulder them with extra challenges, arrests, and financial burdens. This attitude is reflected by many national and international organizations that recommend repealing laws that regulate sex work.

In light of this, I turn to the language in this bill. This language creates a general culture of fear and stigma and will force community members to inform on one another or fear felony prosecution. It is not the job of landlords and business owners to become police informants for a victimless misdemeanor crime like prostitution. All this will do is push sex workers out of safe spaces, further isolate them, and cause them to be victims of more serious violent crimes.

This will increase homelessness since landlords will be wary to rent to individuals they know or suspect to be engaging in sex work. This law will be used to target homes and businesses of people of color and those with diverse sex gender identities. In addition, in Las Vegas where sex work is a major part of the culture and economy, nearly every bar, casino, nightclub, and hotel in the city will be subjected to these requirements or face felony charges. Why do we want to spend taxpayer dollars pursuing low-level, victimless misdemeanor crime that hurts no one? It is between consenting adults and is pervasive in every corner of this city. Frankly, it is a major draw for tourism and a huge driving force of our economy.

I would like this Committee to question the unintended consequences of this bill. If the purpose is to prevent unlawful houses of prostitution, these matters are already covered in NRS 201.358 through 201.380. If it is to protect the most marginalized members of our community, this proposed legislation acts directly counter to that goal. It will increase costs and homelessness. Please vote, "No."

Jazz Sheffer, Private Citizen, Las Vegas, Nevada:

I am a sex worker and am here to speak against the proposed bill. I am going to read a letter that was written by the Sex Workers Outreach Project, which is an ally of the Las Vegas Sex Worker Collective. It is a letter to Florida senators about the massage parlor raid by the Jupiter Police Department. While this is about Florida, I think it is a relevant letter.

Dear Senator Book: Last month Robert Kraft, the wealthy owner of the New England Patriots, went to a spa and had a happy ending. In the state of Florida the sexual act between two consenting adults is illegal. The public discourse around Kraft's notorious happy ending is made confusing by the assertion that human trafficking was a part of the equation. Under federal law, a person has to be laboring under force, fraud, and/or coercion, or be a minor in the sex trade to qualify as a human trafficking victim. In this case there is no evidence of trafficking and no one is being charged with those crimes.

Why all of the hubbub about trafficking? In a world where sexual norms are evolving and we are more tolerant of sexual liberation, the simple concept of sex for money does not spark the same moral outrage that it once did. Laws that were put on the books alongside of laws that made gay sex or interracial sex a crime are outdated. So those who want to keep sex pure are forced to come up with another reason that sex work is inherently bad and leaves, in this case, the false story of human trafficking to do so. Human trafficking is

a horrible crime, and 70 percent of it occurs in agriculture, domestic labor, and factory work. When we push fake narratives of human trafficking in order to keep consensual sex work illegal, we make the real victims of modern day slavery more invisible.

The Jupiter Police Department has spent the better part of a year investigating three massage parlors and determined that once every three days a licensed, legally working masseuse helps her client achieve ejaculation. Tens of thousands of taxpayer dollars went to this discovery.

This would be similar to A.B. 166, which will require an increase in funding to the Department of Corrections.

One wonders what kind of work the police do with such funding. We know undercover police officers were involved. Investigators from as many as three governmental agencies had sexual contact with women whom their leader claimed were sex slaves. Ironically, after receiving their investigatory services, they did not immediately rescue these slaves, but rather let them go for several more months. This should concern advocates who still think trafficking was happening in Jupiter. After six months of gathering footage, the police raided the establishment, confiscated the money, and handcuffed everyone. They immediately published the long list of men suspected of having paid for sexual services in a transparent "name and shame" campaign. At the end of the day, the whole fiasco is not about human trafficking. It is about moral panic and sexual purity. What are the weapons of the puritanical? Shame and humiliation. If I were Robert Kraft and John Childs, I would be filing litigation to penalize and prevent this gross abuse of power and publicize the confusion of sex work and human trafficking for what it really is.

Police should not be wasting their time arresting adults who are engaged in consensual sexual activities. Legislators in all 50 states should pass the legalization and decriminalization of sex work.

Chairman Yeager:

It looks like you were reading that from your phone, but if you have a written copy of the letter, or if you will forward it to our committee secretary, we will make sure that letter gets posted as an exhibit. [The letter was not submitted.] Is there anyone else in opposition? There is no one in Carson City. Is there anyone in Las Vegas?

Phil Sano, Private Citizen, Las Vegas, Nevada:

I am a sex worker in Las Vegas. I am here to urge you to vote against A.B. 166. I would like to take a moment to examine the language that is being used. It can be very challenging to have a sober conversation when people are saying words like "trafficking." It invokes such powerful images of people having their agency stripped from them. That is exactly

what you are doing to the people whom you are trying to protect. "Agency" is clearly the word that we need to think about. When do we have it? When are we able to freely give ourselves to doing what we choose? If you strip agency from consensual sex workers, you are not helping. This is always the refrain that I have seen, and it happens every time we pass a law about sex work. We talk about trafficking, victims, and vulnerable people. These are things that do happen.

I do not want to say that sex trafficking does not happen, but it turns out that people are more often trafficked to work in hotels as laborers, building construction, and cleaning toilets. Those are jobs that we are very comfortable with people doing. Apparently, we like that. That is what our society allows. It would be great if we had an adult conversation—and I mean that in every way you can interpret it—about the reality of our situation. We are not helping anyone when we strip agency from adults. Please vote "No" against this bill.

Tamra Lampkey, Private Citizen, Las Vegas, Nevada:

I am a legal sex worker and longtime resident of Las Vegas, Nevada. My main concern with the language in this bill is its vagueness. As both a victim of child sexual abuse and someone who has actively chosen legal sex work, I worry that this will further stigmatize actual sex trafficking victims from coming forward and working with police officers because of what happens when their avenue to survival sex work is taken away from them. We talk about people who do not speak English or have access to resources. It has been my experience working with several of the local outreach organizations that there is a severe disconnect between the understanding of what a sexual trafficking victim goes through and what the consensual sex worker goes through. Primarily, a consensual sex worker can negotiate and determine the terms of what will happen, whether it is an adult entertainer, a stripper, or whatever. Unintended consequences will happen from this bill and its vague language.

I would like to bring attention back to SESTA/FOSTA and some of the weird free speech issues that have come up since then as an unintended consequence. For example, this would coerce businesses into pushing survivor sex workers into the streets. Screening websites that help with women's safety have been taken down because of SESTA/FOSTA. It is completely illegal to talk on Facebook about having sexual relationships because of SESTA/FOSTA. It uses that language to facilitate sex trafficking. I cannot send nude pictures to my boyfriend. I would like to see vague language clarified so that stuff like this does not get into the records. When it gets into the records, it is impossible to change, which is why you guys cannot use human trafficking instead of prostitution.

Chairman Yeager:

At this time we will take anyone who is neutral. Is there anyone neutral?

Nick Vassiliadis, representing Nevada Resort Association:

We are currently neutral. We are working with the sponsor to alleviate some of our remaining concerns on certain parts of the bill that appear to be vague. We get the intent of the bill. The sponsor and the other stakeholders have been working with us, so we think we can get somewhere by the next meeting.

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

Assemblywoman Tolles has worked with us and our concerns on this bill, so we are neutral.

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

We appreciate Assemblywoman Tolles working hard with us on this bill and clarifying her intent—for the record—to indicate there must be a requirement of actual knowledge.

Chairman Yeager:

Is there anyone else neutral? [There was no one.] Before we take closing remarks, we heard references to SESTA/FOSTA. It is the congressional bill from last summer that deals with sex trafficking. We will now have concluding remarks.

Assemblywoman Tolles:

I thank you that I could clarify the intent of this bill. This bill specifically narrows the individuals who are considered to be actively trafficking victims. There are no increased penalties; I want the record to be clear. It is not for anyone other than those individuals we specifically laid out here. This is not addressing increased penalties in any regard.

Chuck Callaway:

I appreciate and respect the comments made by the opposition, but I want to emphasize that this bill is not directed at victims or sex workers. It is directed at business owners who are facilitating and trafficking victims.

There was a reference made to victimless crime. We had 107 juvenile sex trafficking cases and 149 adult sex trafficking cases in 2018. Look those people in the eyes and tell them this is a victimless crime.

[Written testimony, dated March 12, 2019, authored by Jane Heenan, Private Citizen, Las Vegas, Nevada, in opposition to Assembly Bill 166 was submitted but not discussed ([Exhibit K](#)).]

Chairman Yeager:

I will close the hearing on Assembly Bill 166. We will wait to hear the next bill until everyone who was only here for Assembly Bill 166 leaves the room [recessed at 9:52 a.m.].

We will come back to order [at 9:56 a.m.] and I will open up the hearing on the first bill listed on our agenda today, Assembly Bill 81.

Assembly Bill 81: Makes various changes relating to the oversight and provision of legal representation of indigent defendants in criminal cases. (BDR 14-436)

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27:

Assembly Bill 81 was introduced on behalf of the Nevada Right to Counsel Commission (NRTCC). The Nevada Right to Counsel Commission was created by the Legislature during the last legislative session in Senate Bill 377 of the 79th Session. The Commission comprised 2 legislators, Senator Segerblom and me, as well as 11 other members representing various stakeholders from local governments and the legal community. The Commission met ten times throughout the interim. The purpose of the Commission was to study issues related to the provision of indigent criminal defense in this state. I asked the Legal Division of the Legislative Counsel Bureau to provide each of you with a copy of the final report that was prepared by the Sixth Amendment Center. The report provides a comprehensive look at criminal defense in Nevada, including a discussion of the manner in which criminal defense is provided, the framework of the courts, and the Center's observations after conducting the study.

I would like to see if we still have our guest available on the phone. I would like to yield to him to review "The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services" ([Exhibit L](#)), which is the report the members have in front of them.

David Carroll, Executive Director, Sixth Amendment Center, Boston, Massachusetts:

The Sixth Amendment Center is a nonpartisan, nonprofit organization assisting state and local policymakers to understand their constitutional obligations to provide right-to-counsel services to the indigent accused.

On September 4, 2018, the Sixth Amendment Center published a report, "The Right to Counsel in Rural Nevada" ([Exhibit L](#)), which details for the first time how indigent services are provided in rural parts of your state. As noted, the report was prepared for NRTCC. The report finds that there are long-standing, deep-rooted problems in the delivery of the constitutional right to counsel.

Let me explain. Like every other state in the Union, the state of Nevada has a Fourteenth Amendment obligation to ensure effective Sixth Amendment services in every single court at every single level everywhere in the state. This means that the state of Nevada must, at the very least, have an entity authorized to promulgate and enforce minimal systemic constitutional standards. No such entity currently exists in your state.

The state of Nevada does not currently require uniform indigent defense data collection and reporting. Without objective and reliable data, right-to-counsel funding and policy decisions are subject to speculation, anecdotes, and, potentially, even bias. For example, most rural jurisdictions, in theory, require public defense attorneys to report how many cases for which they are providing representation. In many places the attorneys simply do not do so. Where attorneys do report this information, most rural jurisdictions do not make any use of the data, at least in part, because the data is not reported uniformly even among the various attorneys

providing representation in that same jurisdiction. Even in those jurisdictions that try to use reported data, they review excessive caseloads. It is impossible for local policymakers to gauge attorneys' entire workloads because the state does not currently track which attorneys are providing representation in multiple jurisdictions. Public defense attorneys are employed in other court functions, like being magistrates or prosecutors.

For trial-level services, the state has very limited oversight of primary representation—not even conflict representation—in just two jurisdictions, Carson City and Storey County. Of the 15 remaining counties, 13 fund and administer local indigent defense systems based on the unique characteristics of their jurisdictions. Rural jurisdictions that administrate and fund their own local indigent defense systems, for the most part, do not have any standards for the selection of qualified attorneys with the experience to match the most complex cases to which they are assigned. While our observation was that most rural attorneys appear to be qualified to handle the cases to which they are appointed in rural Nevada, this is serendipitous. There is nothing to prevent future policymakers from hiring nonqualified lawyers offering the lowest cost to cover the greatest number of cases. Without guidance from the state on how to create local structures that meet the constitutional parameters of the Sixth Amendment, local indigent defense systems suffer from various degrees with the following problems:

- A lack of independence from judges, prosecutors, and city government.
- A lack of institutionalized attorney supervision and training.
- An absence of attorneys at initial appearance, resulting in many uncounseled defendants negotiating with prosecutors and then pleading guilty to jail time.
- Judges sentencing convicted indigent defendants to pay fines and fees without constitutionally determining their individualized ability to pay.
- Attorneys failing to advocate on behalf of these defendants.
- A lack of any defense investigation in all but the most serious felony cases.
- Almost no support services such as social workers, paraprofessionals, and mental health services.
- A prevalence of fixed fee contracts that pay the attorney the same price no matter how few or how many cases the attorney handles.
- Requirement that the attorney pay for overhead out of the fixed compensation and that, in some instances, require the attorney to pay for conflict counsel and case-related expenses, like experts, out of their own compensation.

I will give a brief word about your municipal courts. Cities receive no direction at all from the state on how to provide representation in municipal court to those facing possible jail sentences. Municipal courts throughout your state were found to be more likely to charge defendants the entire cost of public representation, or a portion thereof, without conducting individualized inquiries on the record to determine if the defendant can afford those services as is required. For example, the Ely Justice Court routinely assesses \$85 per hour of a public defender's time against indigent defendants. In the Yerington Municipal Court they assess a flat \$250 charge against every defendant who asks for a public defender. We observed

throughout your state that these practices chill the right to counsel for people forgoing a public defender and going it alone.

Finally, although the defendants have a right to appeal the misdemeanor convictions from the lower courts and take that appeal to a district court where the judge is a lawyer, the appellate review is based solely on the record made from the lower court. These misdemeanor convictions most often result from cases where defendants did not have a lawyer in a nonlawyer court to begin with. As a result, the defendant is on his own and incapable of making a defense, of making an appropriate record in the nonlawyer court, and of taking the third step to obtain a review by a court where the judge is a lawyer.

Our experiences working throughout the state and with the NRTCC are that there is a clear agreement that these problems exist. What is not clear is exactly what to do about it. That main issue, in my professional opinion, is that the counties do not trust the state to be a partner in these remedies.

To explain that, I want to give you a very brief history of the right to counsel in your state. First and foremost, Nevada was the very first state in the country to require the appointment and payment of attorneys to the indigent accused in all case types, including misdemeanors. This feat was accomplished in the 1870s, some 90 years before the United States Supreme Court required it in *Gideon v. Wainwright* [372 U.S. 335, 344 (1963)]. The Nevada Legislature codified and the Nevada Supreme Court affirmed the right to counsel in your state based on fairness issues arising out of a series of stagecoach robbery charges in Battle Mountain and tried at the Lander County Courthouse in Austin, Nevada.

Nevada stayed at the forefront of the right to counsel in America up to and including the creation of the Office of the State Public Defender in 1971. That legislation created a seven-member commission which is similar to the commission being recommended in the current bill. The state public defender was authorized to employ deputies and staff and to contract with private attorneys as needed throughout rural Nevada. It met all best practice models of its time. However, when the United States Supreme Court required the appointment of counsel to indigent defendants facing the loss of liberty in misdemeanor cases in 1972, the state went back on its promise to its counties by requiring the rural counties to pay a part of the cost of administering the state public defender system for the representation provided. Over time, the amount of money required of the rural counties grew and grew. The Legislature went on to eliminate the Special Public Defender (SPD) Commission and eventually put the SPD as an office within the Department of Health and Human Services, jeopardizing its independence further. As a result in the long-flow exodus, rural county after rural county began leaving the state public defender services in favor of these fixed-fee contracts. Because of that I think there is some trepidation about moving forward unless and until the state of Nevada steps up and shows that it is willing to be a partner and not move away from the changes that are necessary.

What is the answer to Nevada's systemic indigent defense deficiencies? The Sixth Amendment Center made the following recommendations to serve as a guide for

policymakers in reaching Nevada's specific answers to overcome the systemic deficiencies highlighted in our report. First, the state should create a permanent Board of Indigent Defense Services. The board will provide advice and guidance to an Executive Branch organization, the Office of Indigent Defense Services, to oversee the provision of defender services in the state. The state should authorize the Office of Indigent Defense Services to promulgate standards, including but not limited to attorney qualifications, attorney training, early appointment of counsel, attorney supervision, attorney workload, uniform data collection and reporting, and contracting. Standards should undergo a public comment period and be approved by an official branch of government.

Local governments should be authorized to select the method of delivering indigent defense services that most appropriately serve their needs. When the Office of Indigent Defense Services promulgates a new standard and it is approved, local governments should be given a set reasonable amount of time to create and submit plans to the office regarding how their localized system intends to meet that standard and the associated budget to meet that standard. When the plans are approved by the office, all new spending to meet state standards should come from the state and not from local governments. The central office should work with the local jurisdictions to help them create the plan and help influence how best to meet the standards. The Office of Indigent Defense Services should additionally qualify, train, and supervise the attorneys that local governments may contractually engage; conduct ongoing evaluations; review and approve funded requests for trial-related expenses; and collect uniform data. The Nevada Legislature should create a student loan forgiveness program that encourages young lawyers to serve as public defenders in those counties with a population of less than 100,000.

There was a unanimous vote among the Right to Counsel Commission to accept these recommendations with limited modification: keep the same makeup of the Right to Counsel Commission and the one we suggested for the Board of Indigent Defense Services. Other than that, it was a clear consensus in moving forward with all of this.

I will not speak on the bill itself. We will remain neutral because we are not a 501(c)(4) group that lobbies on a bill pro or con. We do take the position that the bill before you meets the spirit of what it is trying to do to crack the indigent sense of systemic deficiencies in your state.

Assemblywoman Benitez-Thompson:

It was really great serving on this Commission with so many knowledgeable and passionate people who came together to address such an important issue. Together, through extensive deliberation, I think we came up with a pretty good compromise. Although no one got everything they wanted, A.B. 81 allows the counties to continue to provide indigent defense while allowing the state to have some ability to control what is happening and to ensure that adequate counsel is being provided. For those of you who may not be familiar with indigent defense, counties in this state have the option to choose whether to provide attorneys to defendants or to use the State Public Defender. Currently only Carson City and Storey County have elected to use the State Public Defender. The rest of the counties either

have their own public defender or enter into contracts with attorneys to provide legal defense services.

What I would like to do is walk you through the mock-up of the amendment that I provided to you ([Exhibit M](#)). The revisions included in the mock-up were largely in response to the items that the counties requested or brought to my attention. It does not address all of the issues the counties have with the bill, but they will address their issues separately.

Rather than go through the bill section by section, I would like to discuss how the bill would work. Assembly Bill 81 provides a new framework for oversight of criminal defense in this state. To do this, A.B. 81 establishes a Board on Indigent Defense Services and an Office of Indigent Defense Services. The Board on Indigent Defense Services acts as the policymaker and the Office carries out the day-to-day responsibility for overseeing the provision of indigent defense services in this state. In the initial draft, the composition of the board was nearly identical to the composition of the Nevada Right to Counsel Commission. However, you will see that section 6 was amended in the mock-up to revise the membership. This revision was included at the request of the counties. The board consists of 13 members who are appointed by the Governor and the Legislature. Five members of the commission represent small counties, four of whom are selected by the Nevada Association of Counties (NACO). The Chief Justice of the Nevada Supreme Court, or his or her designee, also serves on the board in a nonvoting capacity.

The board oversees the executive director of the Office of Indigent Defense Services. Therefore, the executive director would report to the board about the activities of the office and the manner in which indigent defense services are being provided throughout the state. In addition, the board is required to establish standards for the delivery of indigent defense services to ensure that those services are meeting the constitutional requirements and that attorneys are not being compensated in a way that provides a disincentive to effective representation. What we heard was that some contract attorneys, for example, are paid with flat fees. If the attorney will make the same amount regardless if the case goes to trial, you can see there could be a strong incentive to settle the case rather than take it to trial.

The board will also work with the Office of Indigent Defense Services to develop a manner in which to receive and resolve complaints about indigent defense services. The board is also required to adopt regulations to establish standards for indigent defense. Regulations are needed because the standards apply to the provision of all indigent defense services. In addition, by establishing the standards by regulation, there is notice and a hearing. The regulations will also have to get approved by the Legislative Commission so the Legislature stays informed. The other important piece is that the board is required to adopt regulations to establish a formula for determining the maximum amount that a county may be required to pay for the provision of defense services. By adopting these regulations, the potential amount that counties will be required to pay will be decided in a public hearing. Because this also must be approved by the Legislative Commission, there is legislative input into the formula, which seems fair since the state would be on the hook for any amount above the amount that the counties are required to pay.

The Office of Indigent Defense Services is established within the Office of the Governor, similar to some other offices such as the Office of Economic Development. The executive director of the office is selected by the governor from a list of three persons recommended by the board. Once selected, the executive director is responsible to the board. The reason the office was placed within the Office of the Governor was to give some independence to the office in the oversight of indigent defense in this state. In addition to the executive director, there are two deputy directors. One of the deputies is responsible for oversight of the provision of criminal defense in smaller counties in this state. In addition, this deputy will have oversight of the State Public Defender's Office, which is moved from the Department of Health and Human Services to the Office of Indigent Defense Services. This deputy will also be responsible for developing and providing continuing education programs for attorneys who provide criminal defense services free of charge. The mock-up also includes a new subsection 4 in section 12, which requires this deputy to provide assistance to counties that are required to revise the manner in which they provide indigent defense services because of the standards adopted by the board. That change was requested by the counties.

The second deputy within the office will be responsible for auditing the manner in which indigent defense services are provided throughout the state. This deputy will collect statistics regarding caseloads, salaries, and other information, as well as conduct on-site visits of court proceedings. This function is similar to what the consultant did for us this interim, but on an ongoing basis. The thing to remember is that, although as a state we have allowed counties to choose to accept responsibility for providing indigent defense, the state remains responsible for ensuring that it is actually provided and is effective. Therefore, it is critical to have a continuing review of how services are provided to ensure that defendants are being properly represented.

If the deputy director determines that any person is providing indigent defense services in an inappropriate or ineffective manner, it will be reported and addressed. In addition, the deputy director may suggest entering into a corrective action plan with any county which is found not to be meeting minimum standards. If a corrective action plan is recommended, an agreement must be reached between the deputy director and the board of county commissioners. If there is a disagreement, it must be resolved by the board. In addition, if the corrective action plan will cause the county to expend more money than was expended during the previous budget year plus inflation, the executive director is required to add that amount to the budget for the office in its next budget cycle to assist the county in providing those services. However, if money is needed sooner for the county to meet its responsibilities, there is also authority for the office to request money from the contingency account through the Interim Finance Committee. If additional money is not made available to the county, the county has the option to determine whether to continue providing indigent defense services or turn that responsibility over to the state. If a county fails to comply with the plan in a timely manner, the executive director will be informed. At that point, the executive director may determine whether to enter into another corrective action plan or recommend transferring authority to provide indigent defense services to the SPD. Before that option could be carried out, though, it would have to be approved by the board. The bill also provides the process for transferring the responsibility to the state and for transferring

the responsibility back to the county once the county can show it is able to comply with the standards.

This framework with a board and office creates checks and balances. The board creates the policy, the Legislature approves the policy, and the office oversees the system to ensure compliance. This also seems fair. Any proposal that seeks complete indemnification of local government from additional costs of providing effective defense counsel is just not feasible. With a lawsuit pending against the state which alleges that the state is not meeting its obligation to provide adequate defense services to indigent persons, we also need to be mindful of our duty as a state to ensure that effective assistance of counsel is provided to defendants.

In addition to the framework I have just described, my mock-up also includes an appropriation of \$15 million in section 31, subsection 5, which is added at the end of the bill. This money is appropriated for the use of the Office of Indigent Defense Services so that it can provide grants to counties that demonstrate a need for additional funding. This will allow counties to receive assistance this interim for additional costs they may have in order to meet the standards adopted by the board. In addition, the bill allows the counties, for the first time ever, to request money through the Executive Budget process. Therefore, next session, we can anticipate that the office will include an amount needed to assist the counties with indigent defense in its budget. And in section 8 [subsection 1, paragraph (f)] of the bill, you will see that the board has to approve the budget of the office, so again the counties will have input. I would also note that the Governor has included the new Office of Indigent Defense Services in the Executive Budget for the 2019-2021 Biennium.

Last, there are a few provisions in the bill that are a bit unrelated to the overall framework, but I wanted to mention them. Section 1 of the bill revises the provision relating to the appointment of counsel. The green language in subsection 1 added in the mock-up was at the request of the counties to ensure that anyone who declines the appointment of counsel does that knowingly and voluntarily and with an understanding of the consequences. Section 15, subsection 5 ([Exhibit M](#)) was also added at the request of the counties. Since an attorney must be provided anytime a defendant could serve time in jail, that concept is added to the statutes. Section 31, subsection 3 was added to stagger the terms of the members of the board so that approximately 30 percent are selected each year.

I know others will present their own amendments and will also speak to their concerns. What I want everyone to remember, though, is that the state has a constitutional obligation to ensure that defendants in criminal cases have access to adequate and effective legal representation. The state must provide oversight to ensure this is happening. As our consultant noted in the report, a lack of oversight does not mean that indigent defense is not adequate in all cases, but it means we really do not know. We leave open the possibility of serious harm to our citizens and potential liability to the state. That is just not acceptable to me.

As I stated at the beginning, A.B. 81 provides a compromise, and I know not everyone is happy. With the amendments in my mock-up, money is also made available to the counties to help with the transition and, hopefully, show good faith that the state is willing to work with them. We all must accept responsibility and be willing to work to fix the current situation, and I think this bill strikes the right balance.

Chairman Yeager:

This is not a new issue for the Legislature; it has been going on for a long time. I know those meetings were probably spirited, as today's testimony might be as well. In section 31, subsection 5, which has the \$15 million appropriation, it indicates that counties can apply for that and could be granted the money. There is an indication that, upon the request of the Legislative Commission, the county would show the Legislative Commission what they use that money for. For purposes of legislative intent, what did you envision the counties being able to spend that money on?

Assemblywoman Benitez-Thompson:

The intent is that those dollars be made available and that the board that is created considers the proposals coming forward. There will be regulations passed and standards put into law that the counties will have to comply with. The counties will turn around and say, "This is going to cost us some money to do this effectively and to implement it," and then submit proposals to the board about what those costs would be. It would then be up to the governance of that board to allocate those dollars where they feel it is appropriate.

Assemblyman Roberts:

In section 15, subsection 5, you amend *Nevada Revised Statutes* (NRS) 178.397 to include misdemeanors for any offense that would require jail time. How does that impact municipalities? Does it impact them?

Assemblywoman Benitez-Thompson:

This new section is about the real goal, which is to comply with our constitutional obligation to make sure representation is going to be provided whenever there is the prospect of jail time. We will not be compliant in trying to reach that goal if we do not mention this and if we do not try to intersect at every point at which a defendant might be looking at jail time. For specific examples of why we mention that, I would refer to the report. Mr. Carroll sat in many courts throughout the state; we really urged him. We said, "You have got to see this. You have got to drive this. You have to know the distance. You have to be in these communities to get a feel for what is happening. You have to observe the courts." For specific findings, I would refer you to the report, but it became evident that this was very much needed.

Assemblyman Roberts:

Under the amendments and the scope of this office, would it cover city attorneys as well? Would cities have the availability to access any of those monies for indigent defense?

Assemblywoman Benitez-Thompson:

The goal of this and the goal of the composition of the board is for the board—which is in many ways composed of small government—to set the pace at which they are going to apply and to be able to request grant dollars for whatever they need to come into compliance. We are really giving wide discretion to the board to say, when it comes to those grant dollars, what is going to be brought forward and what is going to be requested. I would leave it to the board. We want to give broad discretion to the board to determine what is going to be needed to meet that need, and then to let those requests be brought forward. I do not think we should put anything too exclusionary on the record at this point because we would be tying the strings of the board to which we are trying to give autonomy.

Chairman Yeager:

Are there additional questions from Committee members? [There were none.] At this time, I will open it up for testimony in support of A.B. 81.

Laura Fitzsimmons, Member, Nevada Right to Counsel Commission:

I am a member of the Nevada Right to Counsel Commission. I was very well aware of the work that was done by each member of the Commission. We adopted the report that you have before you at the very end because of the timing. We got jammed on a bill draft request, and Assemblywoman Benitez-Thompson took it on herself to take this and present it to you. It was not an easy task. Former Governor Sandoval appointed me to the commission because I provided legal services to indigent defenses in the "cow counties" for many years. That was many years ago. I did it as a member of the State Public Defender's Office, and then on my own. You may hear from people from the counties that had a horrible experience with the State Public Defender's Office. That is one of the hesitations you will hear in subsequent testimony. However, at the time, the State Public Defender's Office was an independent state agency, their budget was not under the Department of Health and Human Services, and they were not fighting for dollars for sick kids. When it was an independent agency, it performed wonderfully with the rural counties. I am not saying the rural counties should not have the option of providing these services themselves. I am thrilled and cannot believe this has come so far. It has been in the works for 12 years, and we are almost there.

Marcos Lopez, Field Director, Americans for Prosperity, Carson City, Nevada:

It is 100 percent correct that we have a constitutional obligation to make sure we provide proper representation for indigent defendants in the rural counties. This is the bedrock of due process. When it comes to life, liberty, or property, we should always make sure the unwarranted loss of these is minimized whenever possible. We believe a standard system must be in place to make sure this is taking place.

Utah faced similar challenges, and they passed similar reforms. That is where you can look for the system and metrics behind it. Overall, the Sixth Amendment Center and David Carroll have all noted that the Utah reforms have been very positive. We are in support of this bill with the amendment.

David Neidert, Private Citizen, Fallon, Nevada:

For five years I was a contract public defender in one of the rural counties. I want to thank the Sixth Amendment Center because they have done an excellent job in talking to people and analyzing things. When I was interviewed by the representative from the Sixth Amendment Center, I spent over an hour with him. He explored my thoughts on what was needed and what the problems were. The reason this bill is needed is that some counties look at indigent defense as being the stepchild in the county budgeting process.

When my contract was up for renewal, it was not renewed because I told the county I did not think they were spending enough money on indigent defense. I did a lot of studying on this when I was trying to renew my contract. I found that, in the counties that are doing the best job with indigent defense, there was a major correlation between how much money was being spent for indigent defense and the district attorney's budget itself. In every county where I could find data, the budget for the public defender's office was about 57 percent of the budget for the district attorney's office. That was true in Washoe, Clark, Elko, Carson City, and Humboldt Counties. All of those counties have full-time public defenders. When we looked at what counties were paying contract public defenders, it was very disparate. In my county, Churchill County, that number was 24 percent. The budget for indigent defense was 24 percent of what the budget was for the district attorney's office. In fact, in Churchill County, it went down after my contract ended, which is a major concern. They are not willing to spend the money because it is not sexy. It is spending money for criminals, and the average voter does not understand that providing indigent defense is a critical function of our constitutional system.

The other concern I have has to do with attorney qualifications when there are conflicts in the public defender system. Some counties do that well if they have multiple public defenders and seldom have to go to an outside attorney. Carson City has four contract attorneys so that if the state public defender has a conflict, one of those four attorneys will get the appointment. For other counties, it is whoever says they want to take an appointment. There is nothing that touches on the qualifications for people who are appointed to provide indigent defense services in the counties. In Washoe and Clark Counties, they have a person whose job it is to track down and identify people who are going to be in that situation, and they have standards. In Washoe County, it is fairly easy to be put on the list of appointees for misdemeanor cases and minor felonies. You have to prove that you are qualified to serve as counsel for our most serious felonies. I do not see that in the bill. There should be a way for the commission to be able to look at how counties are appointing their primary system and the conflict counsel.

A part of that is the issue of compensation. I know that is not in this bill; however, the reality is that the state of Nevada has paid appointed counsel \$100 per hour for well over a decade. I am on the Criminal Justice Act (CJA) panel for the federal courts. I take state appointments. The CJA panel rate this year is \$148 per hour. What the state of Nevada is paying for indigent defense on an appointment basis is 50 percent less than the federal level. This is an important bill. It provides a great mechanism for providing indigent defense services throughout the state.

The other issue is the area of training. The bill provides for that. I knew as a contract public defender I was responsible for my own continuing legal education. I may have had continuing legal education that had to do with my profession. A continuing legal education program put together by this commission—which is one of the provisions of this bill—would certainly provide ongoing training for attorneys providing indigent services throughout the state. This bill is a major step in the right direction, although I opposed Senate Bill 377 of the 79th Session.

Wiselet Rouzard, Field Director, Americans for Prosperity, Las Vegas, Nevada:

I ask everyone to vote in support of A.B. 81. Like every other state, the state of Nevada has a Fourteenth Amendment obligation to ensure effective Sixth Amendment services in every court at every level everywhere in the state. This means the state of Nevada must, at the very least, have an entity authorized to promulgate and enforce systemic standards. No such entity currently exists, and this bill definitely addresses that. The Sixth Amendment guarantees the right to counsel when the government accuses an individual of a crime. Without access to quality legal services, indigent defendants in Nevada are being denied basic constitutional rights. With the Nevada Right to Counsel Commission poised to release their reform recommendations, it is time for legislators to take action to ensure income is not a barrier to Americans' access to credible legal defense. More importantly, this brings equitable standards to our state to ensure those individuals have equal representation, predominantly affecting minorities. I ask that you support A.B. 81 and that we resolve this effectively.

Scott L. Coffee, representing Nevada Attorneys for Criminal Justice:

I am appearing this morning not in my capacity as a Clark County Public Defender, but on behalf of Nevada Attorneys for Criminal Justice (NACJ). We support A.B. 81. I have been doing this for close to 25 years, and in all of that time there has been a crisis in the rural areas concerning the quality of indigent defense delivery. There is no question about that. I have heard about it since my first day in the office. This bill addresses that. There are concerns about how the bill treats Clark and Washoe Counties. The idea of having standards for the whole state—for data collection, and for providing funding for the rural counties should they need it—are all wholeheartedly supported by NACJ. We support the bill.

William Ledford, Director of Advocacy, Lutheran Engagement Advocacy in Nevada:

Based on our social statements on criminal justice and economic equality, we support any legislation that ensures justice is truly for all, not just for those who can afford it.

Chairman Yeager:

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

Dagny Stapleton, representing Nevada Association of Counties:

We want to provide some information from a county perspective since we have a few concerns. As Mr. Carroll and others mentioned, Nevada's counties currently provide almost 100 percent of the indigent defense services in the state of Nevada. Out of 17 counties, 15 provide and pay for 100 percent of that service. Nevada Association of Counties (NACO)

has been engaged proactively on the issue of indigent defense in Nevada for over a decade. We have been part of the Nevada Supreme Court's Commission on Indigent Defense. In four out of the last five legislative sessions, NACO has carried legislation seeking reforms and additional funding for this system. County representatives also participated in the Right to Counsel Commission this interim. You will hear from some of those folks. Nevada's counties are in support of reforms to the indigent defense system. We appreciate the preamble language in A.B. 81, which articulates the state's responsibility to provide indigent defense. We also appreciate the recognition of the role that counties have and will surely continue to have in providing these services.

A lot of what is outlined in the bill creates a structure for the oversight of indigent defense in Nevada that would be effective and help counties provide these services. However, we do have a few concerns with the draft that was presented, and we want to go over them. First, there is not a clearly articulated cap in the money that counties would be expected to spend. Without that, there is no guarantee that the proposed changes would not become an additional unfunded mandate to counties. We are already providing almost 100 percent of this service. Without that, there is no guarantee that the reforms proposed will actually be carried out.

An additional concern is that there is no guarantee that the systems counties have established—some of which were created to take the place of an ailing state system—would not be abolished without a viable and well-funded state alternative to put in their place. The amendment that Clark County has provided would remedy these issues ([Exhibit N](#)). We are in support of that amendment.

Pete Olsen, Chair, Churchill County Commissioners:

Churchill County is opposed to A.B. 81 as written. However, we are in support of the Majority Leader's mock-up, and an amendment submitted by Clark County ([Exhibit N](#)) is also accepted. Churchill County is supportive of indigent defense reform. In fact, Churchill County has worked hard over the past decade to improve indigent defense in our county. As part of this discussion today, I want to share a little bit about our experience on the issue.

For many years, indigent defense was provided to our county by the Office of the State Public Defender. There were problems with that, as many people have mentioned. Eventually, the county decided to stop using those services and began to use contract counsel. I was not a commissioner at the time that decision was made, but in speaking with prior commissioners, it came to light that the services indigent defendants were receiving from the State Public Defender's Office were very poor. Their problems stemmed from having appointed counsel that did not want to work in Churchill County. My understanding is that they did not like to commute. They were often late to court, and they did not speak to their clients as often as they should. Basically, it was a job they did while waiting for a better one to come around.

By using contract counsel, we believe we are able to find more committed and competent attorneys to provide these legal services. Currently, we use two contract attorneys, as well as

conflict counsel, who are in Fallon nearly every day of the week. These attorneys are committed to providing the best representation for their clients. The best part is that they want to be there in Churchill County. This improves services for our county, and we realize there is still room for improvement.

As those who have testified before me have said, we know that providing indigent defense is technically a state responsibility. That said, from Churchill County's perspective, when the state was not delivering, we knew it was important to take this service over. We did so and remain committed to doing that. In short, we are committed to remaining partners with the state to provide indigent defense, both in terms of funding and administration. We welcome the support and additional funding provided through A.B. 81 but also recognize that the only way to do this right is for the county to be involved, to help find available lawyers in our communities, and to create the needed local infrastructure. In counties like ours as well as those far more remote, it just was not feasible for attorneys from Carson City to travel to the rural areas of our state to attend all the hearings and meetings with the defendants who require the defense that is their constitutional right.

Our main concern in the original bill is that there is no incentive for the state to approve additional funding to a county that is subject to a corrective plan. If requested funding is not approved, the new executive director will still have the authority to order that a county use the services of a state public defender. A county should not be held accountable for not implementing a corrective action plan unless the funding is also authorized. There should continue to be a local involvement to avoid the errors of the past. The provisions added by the amendment from Clark County help ensure that our county costs will not grow disproportionately. The bill also outlines that the state will have an important role in helping to ensure we are all doing this right. If this bill and the amendment were passed, we look forward to working to improve indigent defense in Nevada.

Joni Eastley, Member, Right to Counsel Commission; and Member, Rural Subcommittee, Indigent Defense Commission:

I am a former three-term Nye County Commissioner and Assistant County Manager. I am opposed to the bill in its current form. I do, however, support the proposed amendment provided by Assemblywoman Benitez-Thompson. I also support the proposed amendment from Clark County, which I believe further improves the bill. Nye County is one of those counties that left the public defender services in the 1990s. Currently, they spend more than \$750,000 to provide quality defense to indigent defendants. That might not seem like a lot of money to Clark County or Washoe County, but it is a tremendous amount of money for Nye County. It demonstrates the county's commitment to indigent defense. Again, I support the amendments.

Jeffrey M. Wells, Assistant County Manager, Clark County:

I also had the pleasure of serving for the last 12 years on the Supreme Court's Indigent Defense Commission. After the bill draft request came out, I worked with several people on proposed amendments. These amendments were submitted to the sponsor, and many of those suggestions that the counties came up with were included in her mock-up. The

Clark County amendment makes the assumption that the mock-up will be adopted, but we will be seeking amendments to the amendment.

Our primary concern deals with section 14. For this scenario, a rural county is currently spending \$10 million for indigent defense. Because of the new policies and guidelines adopted by the indigent defense board, the requirement moved that to \$20 million for hiring more lawyers, staff, and investigators. What would happen is they would go to a corrective action plan; the county would submit a budget request to fund that amount because the corrective action plan says it will cost \$10 million more. All is good if that money is forthcoming. They could adopt the corrective action plan, hire the additional staff, and move forward. However, what happens if that money does not come to the county? They would be in violation of the corrective action plan if they could not fund it themselves. Under section 14, the executive director of this new board would be able to force the transfer of the public defender's office to the state. When you get down to section 14, subsection 6, the board could still impose upon that county the full \$20 million cost. In the end, you have forced them to spend more money and they have lost local control of the entire public defender system. That is one example.

Now let us look at a Clark County example. Let us say that the caseload standard is adopted by this board, and that caseload standard is 150 felonies per attorney. Perhaps the Clark County Office is running at 165 cases per lawyer. The public defender for Clark County could actually show up and testify in front of the board and say, "Because two-thirds of all felonies in our county are reduced to misdemeanors without ever leaving justice court, the 165 is fine. We do not need to hire ten percent more staff to reach the 150." The board could say, "No, the rule is 150." The county could ask the state for more money under section 14, but more money might not be forthcoming. The executive director could then say they have not met the provision of the corrective action plan; they have not reduced it to 150. Under the bill as written now, the state public defender will now get to take over the 250 employees and the \$48 million budget that Clark County now spends on indigent defense.

The Right to Counsel Commission primarily dealt with rural Nevada. They were not dealing with Washoe County or Clark County. The intent of the amendment that is being proposed by Clark County for section 14 is to say Clark County will honor all of the guidelines, provisions, and policies coming out of the board, but only systems and counties with a population under 100,000 can be involuntarily transferred over to the state public defender. For the smaller counties, we included recognition that this really is a state obligation. The state cannot involuntarily take it from rural counties unless the state has actually provided the county with the necessary funds to meet their corrective action plan, but they have still failed to meet the requirements. Those are the two main provisions we have put in there.

Secondly, we have tied the costs back to what was spent by each of the counties in 2018 plus inflation. At first that might seem almost the same as the current amendment that says they do not have to spend more for the provision of indigent services than they did in the prior year. The reasons for the change are these: first, the 2018 number is more definitive; and

second, rural counties that come up with additional money in a given year might be able to use it to cover a particular case. They might have an unusual case or a murder case that does not normally occur in their budget. If they put it in one year, we do not want them to be locked in every year thereafter. We want to tie it to that year's number and not to increase the budget for future years.

In essence, we are here in opposition only because of these concerns. We are not opposing the concept of the bill or the proposed amendment; we expect that to pass. We just have these additional concerns.

Darin Imlay, Public Defender, Clark County:

We also understand the importance of quality indigent defense in the rural counties. Our concern is with section 14 also and with the involuntary transfer of public defender services from Clark County to the state. Our office has a staff of over 200 people. We have specialty teams. We have an extensive training program. Many of the things I have heard so far deal with experienced handling of particular cases, as well as appropriate training. Those things go on in the Clark County Public Defender's Office. We have investigators, social workers, and mitigation specialists that handle the cases with proven effective representation in Clark County. Our support is also for the amendments to exclude counties with a population over 100,000.

Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County:

We echo the statements from Clark County and appreciate the amendment. We do have the same concerns, however. We are here in support of the amendment proposed by Clark County, as well as the amendment from Assemblywoman Benitez-Thompson. Without the Clark County amendment, we would be opposed.

JoNell Thomas, Special Public Defender, Clark County:

My office has 37 employees, including 20 attorneys. We handle conflict cases for category A felonies and capital cases in which the Clark County Public Defender's Office has a conflict. I have prepared written testimony, which I have submitted to the Committee ([Exhibit O](#)). I am very supportive of the vast majority of this bill. I believe there should be statewide standards. The reporting requirements may impose a burden, but I think it is warranted.

What I am concerned about is what I call the "takeover" provisions in section 14 and section 15, as those would be applied to the institutional offices in counties over 100,000. My office started as a state public defender office. Many of you may remember James Jackson, the original head of that office. For a number of reasons that office failed in Clark County. One of the big reasons was the pay disparity between the state public defenders and the Clark County public defenders. I cannot imagine the logistics that would be involved in transferring my office to the state, let alone the bigger offices of Washoe and Clark Counties. My office has eight attorneys who are qualified to handle death penalty cases. I do not know if the state public defender's office has one. I would be surprised

if they had two. I do not know where the state would find office facilities. Who would take care of the old cases that are in files? We deal constantly with habeas cases. I do not know where you would find employees willing to work for the state wages or if you would assume the collective bargaining agreements of our existing attorneys. It is critical that defense attorneys have pay parity with the prosecutors in order to attract the most qualified attorneys and to keep those attorneys in our offices.

Most critically, I wonder about our clients and what would happen if they were suddenly abandoned by the attorneys who have been working on their cases. Sometimes death penalty cases can last years. I believe this would create a nightmare. I urge you to follow the Clark County amendments and make it very clear in this bill that there would be no takeover of the urban institutional defender offices.

Chairman Yeager:

Is there anyone else in opposition? [There was no one.] Is there anyone neutral on A.B. 81?

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

The issue of indigent defense is a major priority for the American Civil Liberties Union of Nevada. We filed a class action lawsuit in November 2017 to address these issues. That litigation is still ongoing. We testify in neutral today because, while we believe A.B. 81 is a good step forward, it is only a first step toward fixing the broken public defense system in this state. The guarantee of the right to counsel has expanded and changed over time, but the one thing that is true, and is the animating principle of *Gideon* remains the same: it is the state's responsibility to ensure that any person hauled into court who is too poor to hire an attorney is provided an adequate legal defense. We think that A.B. 81 is a step in that direction, and we will have to monitor the implementation of this bill to see whether the Sixth Amendment rights to counsel is met.

We have concerns that—although the bill promises to create standards, oversight, and data tracking—it does not specify what those standards are, exactly what that oversight will entail, and what the data tracking will look like. If the standards, data tracking and reporting, or evaluation of caseload standards does not take into account when attorneys have multiple contracts across different counties, or take into account the attorneys' caseload from their private practice, this could be constitutionally problematic. For those reasons, we are testifying in neutral today. We will continue to fight for adequate Sixth Amendment rights for individuals through the courts.

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

We are neutral on Assembly Bill 81. It has long been needed and is a worthy bill to raise the quality of indigent defense in Nevada. Specifically, the principles found in this bill in section 8 are necessary requirements of providers of indigent defense to meet the requirements of the Sixth Amendment of the *United States Constitution* and *Gideon v. Wainwright*. We recognize the importance of the performance standards and the provisions set

forth in section 8: specifically, caseload standards, proper training and education of attorneys, fair compensation, and most significantly, vertical representation.

We would like to share that we have confidence in working with our county in meeting the standards in strong support and relationships.

Chairman Yeager:

Is there any additional neutral testimony? Seeing none, I will invite the sponsor to come up for concluding remarks.

Assemblywoman Benitez-Thompson:

I want to circle back to Assemblyman Roberts' question. I want to give you the specific pages of the answers to your questions. On page 9 of the report ([Exhibit L](#)) you will see where it talks about our court system and lays out Nevada's court systems. On page 14 there is a table and page 13 touches on the fact that six of the justice courts in rural counties operate a court that serves as both the justice court for the township and the municipal court for the city. In the other rural counties, there are only four freestanding municipal courts. If you look at the chart on page 14, they lay out our unique structure in Nevada. All of that was contemplated. When I referenced the report, that was what I meant. The intent is there to serve what has become a very unique system in Nevada.

There are two broad themes that I see coming forth in the amendments. When we talk about the Clark County amendment and the takeover provision, I want you to be mindful that the board that is created by A.B. 81 has 13 members, and 7 of those are county representatives. They have the majority of the board, so they will have the conversation about how to adopt regulations and standards and how they will come into compliance with them. That is important. On the bottom of page 7 of the executive summary of the Right to Counsel Report ([Exhibit L](#)), it says very clearly, "Local governments should be authorized to select the method of delivering indigent defense services that most appropriately serves their local needs." It also goes on to say, "local governments should be given a set reasonable amount of time to create and submit plans." When they are on the board and they are talking about the adoption of these regulations, they are also setting the pace for implementation. We need checks and balances on it because we do not want them to set the pace too slowly or in a way that would be disingenuous to the goal we are trying to reach. That is why we have the regulations coming back to the Legislative Commission. There is always going to be some tension, but that is good. That is what the checks and balances are for. Ultimately, if the majority of counties say that one county has a problem and this needs to go back to the state, I cannot imagine what the board conversation would look like. I imagine it would be lively. If that is what the board of counties says, they will probably be spot-on.

I want to talk about the money provision. We have gone to great lengths to say that we, the state of Nevada, are going to step up as a stakeholder of this. We are creating an office with seven different positions that will take a lot of money to stand up, and we are committed to that. We are having that hearing on Monday [March 18, 2019]. We have added \$15 million to this bill so there can be grant money to give out so that compliance is not an excessive

financial burden. Can we make promises that there will not be any additional costs? No. We have to flat out reject the notion that, because we cannot fund something, their obligation does not exist. Just because we cannot fund education the way we want does not mean the obligation to educate our children goes away. Just because we cannot fund child welfare the way we want does not mean the obligation to protect those children goes away. The same holds true for this. We will use our legislative declaration, which is the "whereas" clause on the first page of A.B.81, to guide us to say that we need to do this and step up and fund this. It is the right thing to do. We will always have a conversation about money. They are getting an office and will have to fight like the rest of the agencies do every two years for a piece of the State General Fund. I believe we are trying to show the best good faith that we can in not incurring non-funded mandates.

Chairman Yeager:

I will close the hearing on Assembly Bill 81. Now is the time for public comment. Does anyone want to give public comment, here or in Las Vegas? I do not see any public comment. Is there anything from Committee members? It does not look like it. Tomorrow we will meet at 8 a.m. and we will have two bills, which we will hear in reverse order from the agenda. Meeting adjourned [at 11:16 a.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a proposed amendment to Assembly Bill 166 presented by Assemblywoman Jill Tolles, Assembly District No. 25.

[Exhibit D](#) is a packet of photos in support of Assembly Bill 166 presented by Nate Chio, Lieutenant, Special Investigations Section, Las Vegas Metropolitan Police Department.

[Exhibit E](#) is a copy of a PowerPoint presentation titled "City of Las Vegas Presentation A.B. 166," presented by Mary McElhone, Deputy Planning Director, Department of Planning, City of Las Vegas.

[Exhibit F](#) is a letter in support dated March 11, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, authored by Hillary L. Schieve, Mayor of Reno, Nevada, and presented by Laura Conklin, Sergeant, Reno Police Department.

[Exhibit G](#) is letter authored by Katie Ryan, Director of Public Policy, Dignity Health-St. Rose Dominican, dated March 12, 2019, presented by Sara Chalhagian, representing Dignity Health-St. Rose Dominican, in support of Assembly Bill 166.

[Exhibit H](#) is written testimony submitted by Kimberly Mull, Private Citizen, Las Vegas, Nevada, dated March 12, 2019, in support of Assembly Bill 166.

[Exhibit I](#) is a document titled "Review of Felony Convictions by the Executive Director of the Nevada State Board of Cosmetology," submitted by Gary Landry, Executive Director, State Board of Cosmetology, in support of Assembly Bill 166.

[Exhibit J](#) is a document titled "Felony Review Process," dated June 6, 2018, submitted by Gary Landry, Executive Director, State Board of Cosmetology, in support of Assembly Bill 166.

[Exhibit K](#) is written testimony dated March 12, 2019, from Jane Heenan, Founder, Gender Justice Nevada, in opposition to Assembly Bill 166.

[Exhibit L](#) is a report titled "The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services," dated September 2018, presented and submitted by David Carroll, Executive Director, Sixth Amendment Center, Boston, Massachusetts, in support of Assembly Bill 81.

[Exhibit M](#) is a mock-up of a proposed amendment to Assembly Bill 81 presented by Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27.

[Exhibit N](#) is a proposed amendment to Assembly Bill 81, dated March 11, 2019, submitted by Clark County.

[Exhibit O](#) is written testimony submitted by JoNell Thomas, Special Public Defender, Clark County, in opposition to Assembly Bill 81.