MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
March 14, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:07 a.m. on Thursday, March 14, 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:

None

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Aaron D. Ford, Attorney General
Michael C. Kovac, Chief Deputy Attorney General, Criminal Prosecutions Unit, Office of the Attorney General
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Ashton Packe, Sergeant, Counter Terrorism Section, Las Vegas Metropolitan Police Department
Colin Haynes, Senior Financial Intelligence Analyst, Las Vegas Metropolitan Police Department
Jennifer P. Noble, Chief Appellate Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office
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
Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General
Raymond Spencer, Lieutenant, Homicide Bureau, Las Vegas Metropolitan Police Department
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Richard Casper, Deputy District Attorney, Douglas County District Attorney's Office
C. Joseph Guild III, representing State Farm Insurance Companies
Lisa Foster, representing Allstate Corporation; and American Family Insurance Company
Jeanette K. Belz, representing American Property Casualty Insurance Association; and Liberty Mutual Insurance
Robert Giunta, Senior Deputy Attorney General and Director, Fraud Control Unit for Insurance, Office of the Attorney General
April Tatro-Medlin, Private Citizen, Las Vegas, Nevada

Chairman Yeager:
[Roll was called, and Committee protocol was explained.] We have four bills on the agenda today brought by the Office of the Attorney General and we will take them in order. I formally open the hearing on Assembly Bill 15, which revises provisions governing crimes related to certain financial transactions. Each of these bills has an amendment on the Nevada Electronic Legislative Information System. Welcome, Attorney General Ford, back to our Judiciary Committee.

Assembly Bill 15: Revises provisions governing crimes related to certain financial transactions. (BDR 15-409)

Aaron D. Ford, Attorney General:
Thank you for having me back today in what appears to be Attorney General day in the Judiciary Committee. I have Michael Kovac, Chief Deputy Attorney General in the Criminal Prosecutions Unit with me here today to provide our presentation on Assembly Bill 15.

Michael C. Kovac, Chief Deputy Attorney General, Criminal Prosecutions Unit, Office of the Attorney General:
Thank you for the opportunity to testify in support of A.B. 15. We are here to testify in support of A.B. 15, which is a proposal to strengthen Nevada's anti-money laundering laws (Exhibit C). There are a number of reasons this legislation is being proposed:

- According to the United Nations Office on Drugs and Crime, approximately $800 billion to $2 trillion is laundered annually. This represents 2 to 5 percent of the global gross domestic product.
- The U.S. Department of the Treasury's most recent National Money Laundering Risk Assessment, published in 2015, specifically identifies casinos as one of five vulnerabilities relating to the threat of money laundering.
- In cases my unit is prosecuting, we are seeing clear efforts by criminals to conceal the criminal sources of money they are earning. Specifically, we have seen concealment from drug dealers, gun runners, pimps, and illegal bookmakers.
- Beyond our own cases, a number of national and international media sources have published stories about criminals taking advantage of Nevada's corporate secrecy laws to launder money from notorious crimes committed around the world.
- While the *Nevada Revised Statutes* (NRS) presently has an anti-money laundering statute in place, NRS 207.195, it is outdated and provides weak penalties that do not reflect the seriousness of the crime. Right now it is a category D felony.
- The combination of Nevada's corporate secrecy laws, Nevada's weak and outdated money laundering law, and Nevada's numerous cash-based businesses is essentially an invitation to criminals to launder money through our state.

While I understand that privacy and financial considerations can arguably justify the corporate secrecy laws, there is no justification for the shortcomings of the anti-money laundering laws. The proposed legislation serves to address these issues by updating and

expanding the conduct covered by Nevada's anti-money laundering statute and increasing the penalties for money laundering.

Specifically, NRS 207.195, subsection 2, makes it a crime to conduct a financial transaction with the intent to evade reporting requirements put in place by the Nevada Gaming Commission. Until 2007, the Nevada Gaming Commission's regulations, specifically Regulation 6A, included reporting requirements that exempted casinos from federal reporting requirements relating to the Bank Secrecy Act (BSA). In 2007, the Nevada Gaming Commission repealed Regulation 6A. The repeal effectively made NRS 207.195, subsection 2, meaningless. The proposed amendments (Exhibit D) to this statute would make it a crime to conduct a financial transaction with the intent to evade any federal or state reporting requirement, thereby giving this provision the teeth that were intended when NRS 207.195 was enacted.

Another provision that is being proposed is the spending provision. It makes it unlawful to knowingly engage or attempt to engage in a financial transaction in criminally derived property of a value greater than $5,000. It is also proposed to include cryptocurrency as a property that is covered by this statute. The spending provision is modeled after *United States Code*, Title 18, Section 1957. The federal threshold is $10,000, and the purpose of the spending provision is to render a criminal's money worthless.

Finally, we are proposing increased penalties for money laundering. Presently, it is a category D felony, which is basically a slap on the wrist. We are seeking to increase the treatment of these crimes to the level of a category C felony. I have spoken to agents with the United States Secret Service and the Internal Revenue Service who see laundering in many of the cases they investigate. They have informed me that their respective agencies support our efforts to strengthen these laws.

Aaron Ford:
I know we have Mr. Chuck Callaway in the audience and some of his officers in Las Vegas, and if it would be okay with Chairman Yeager, I would like to bring up Mr. Callaway to make a couple of comments as well.

Chairman Yeager:
Before Mr. Callaway speaks, I wanted to ask about the new section 3 in the amendment [page 5, (Exhibit D)] that was going to be added to the bill, so I would like to cover that as well.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
I have two detectives in Las Vegas to speak regarding A.B. 15. One specializes in financial crimes and money laundering cases and the other is from our counterterrorism section. Specifically to section 3 of the bill, the Attorney General added this section into the language to address an issue that we are seeing primarily occurring with sovereign citizen-type groups who file false court documents for the purposes of trying to intimidate or coerce money,

usually from public officials. With your permission, Chairman Yeager, I would turn it over to the two detectives in Las Vegas to both talk about the money laundering issue and also section 3 of the amendment.

Ashton Packe, Sergeant, Counter Terrorism Section, Las Vegas Metropolitan Police Department

The addition of section 3 [page 5, (Exhibit D)] would give law enforcement in the state of Nevada additional tools to combat a small but growing segment of our population known as sovereign citizens. This bill is specifically looking to criminalize where sovereign citizens create false but real-looking legal documents through false courts. They do not recognize the jurisdiction of the United States or the State of Nevada. This bill looks to create a law that would give law enforcement the tool to combat these folks who try to serve false judicial findings, fines, notices, and court renderings on law enforcement officials, police officers, and the judiciary that will prosecute those folks in a court of law.

Colin Haynes, Senior Financial Intelligence Analyst, Las Vegas Metropolitan Police Department:

I would like to speak to the proposed amendments (Exhibit D) to the money laundering statute. There is a proposal to expand the property that could be considered laundered. Currently, it is defined as a monetary instrument. Financial transactions in a monetary instrument are defined in the statute as essentially cash, negotiable instruments, precious metals, and stocks. The problem with that definition is that it does not take into account many of the different ways criminals launder their proceeds through other assets or financial instruments. I worked multiple cases with individuals who transfer their money into real estate ownership. Title to property is not a monetary instrument under the current definition. By adding the language "or other property," we would be able to better capture the many different ways that criminals can launder their funds through business ownership, title to vehicles, title to real estate, insurance policies, or casino chips. Many of these things do not fall under the definition of a monetary instrument. Part of this proposal includes expanding that to include other property.

I would just like to point out that with the language I have been looking at, we would probably need to add that same wording "or other property" into the proposed section 1, subsection 8, paragraph (a), which defines a financial transaction as involving a "monetary instrument." I noticed that is not in the language and may need to be added if this Committee is inclined to adopt this proposal.

The second part of the proposal that I would like to speak about is the addition of the spending provision. Currently, money laundering occurs when somebody takes steps to hide or disguise the origin of their money—to separate the assets or wealth that they have acquired from the criminal activity through which they earned it. I have investigated cases where the suspects have spent their money, merely using it without any attempt to hide the origin. They just begin to spend it. I have had cases where they purchased real estate. There is nothing done to disguise where the money came from or the true ownership of the money. They just, I assume, work under the idea that nobody will notice. Absent any steps to hide

where the money came from or disguise its ownership, that spending would not fall under this money laundering statute. The addition of the proposed spending provision in section 1, subsection 2, would help to fill that gap and capture those situations where individuals spend their money in that fashion.

Finally, on the issue of increasing the penalties from a category D felony, the reality is that investigating these cases is very complex, document-intensive, and time-consuming. Money laundering is an integral part of the criminal acts that earn this money. In every case that I work, it is about the money—it is about acquiring wealth—and when these criminal enterprises are earning money, there is a requirement—a need—to launder that money. Without the laundering, the criminal enterprise itself suffers, the profits suffer, so the laundering part is as integral to these criminal acts as the criminal acts themselves. The category D felony does not reflect that seriousness. It does not reflect just how important money laundering is as part of facilitating and rewarding these criminal schemes. The reality is that with the expenditure of resources needed to investigate these cases, I am frequently approached by our detectives to obtain assistance to put together money laundering cases. I am an anti-money laundering specialist and I testify in district court as an expert in money laundering. My first question every time is, Can we take this case to the U.S. Attorney's Office? The punishments and severity of money laundering really are not reflective of the nature of the crime, the complexity of the crime, and the importance of laundering criminal proceeds to the criminal acts that generate those proceeds.

Aaron Ford:
I just want to acknowledge that this is a friendly amendment (Exhibit D), and our office is accepting of it to the extent the Committee wishes to entertain it.

Assemblywoman Nguyen:
I am familiar with some of the problems in Las Vegas with sovereign citizens, but I know several on the Committee are not familiar with it. Is there anyone that can explain what that means, what their philosophy is, and how this bill would specifically address that?

Ashton Packe:
Sovereign citizens are a loose-knit, decentralized group of individuals who do not recognize the authority or the laws of the United States or the State of Nevada. There is no "head" of a sovereign citizen movement. Sovereign citizens basically started in the 1970s from what law enforcement calls the "posse comitatus." It has its roots in white supremacy and a rejection especially of federal oversight, law, and government. What it has turned into today is a loose-knit group of people who take a buffet approach where they will pick and choose some things that they like and other things that they do not. They can be violent. It can be as simple as, I do not recognize the authority of the state to require me to have a driver's license or to register my vehicle or pay taxes. It can be very minor, something as little as they do not have to wear a seat belt because technically there is no victim of a crime. They can go all the way to hardcore ideology that represents a hatred of our government all the way to including the murder of law enforcement officers. That has occurred across the United States as well as in Las Vegas with the assassination of two of our officers—Officer Alyn Beck and Officer

Igor Soldo—several years ago. Those folks ascribed to the sovereign citizen ideology. They took bits and parts of it and had ties to that group. Sovereign citizens, under the technical definition, are a domestic terrorist organization that rejects the laws of the state and the federal government.

Aaron Ford:
I would like to augment that as well as have Mr. Kovac provide another example. Assemblywoman Nguyen, you may recall when I gave our office overview presentation, I mentioned sovereign citizens. I mentioned them as a movement, and contrary to the belief of so many folks when you hear about terrorism, you think international terrorism. You think about folks who do not look like us, generally speaking. The largest terroristic threat, I learned, was the sovereign citizen movement. It operates here and elsewhere. We are working hand-in-hand with law enforcement to try to tamp down some of those efforts.

Michael Kovac:
Just to give you an example of one that our office had recently that has been going on for a couple of years: A guy, his wife, and friends got together because they were all having trouble making the payments on their houses and were facing foreclosure. They started filing nonsensical documents, things that had their thumbprints on it, with red ink, and things that would have no legal significance at all. They just made up their own rules altogether. They think that by filing these documents that the banks can no longer foreclose on their homes. They do that, see it is unsuccessful, but they still continue to file those documents.

In addition, they go out and offer their services to other people for thousands of dollars. All of these naïve people pay them thousands of dollars to file nonsensical documents on their home and ultimately the home is foreclosed upon. We prosecuted people for mortgage fraud for doing that. After we prosecuted them, they basically had their own alternative government complete with fake identification cards and fake driver's licenses. They have all kinds of weird grammar and capitalization and think that all of them have legal significance. In their alternative government, they hold their own underground grand juries and courts and issue what look like court orders. I have seen one from a superior court judge of Nevada that held our investigators in contempt, found them guilty of treason, and gave the authority to their members to come out and arrest our investigators. We have had everything short of the violence, but that is obviously the next step we are worried about. It is just an example of the oddities we see within this community.

Assemblyman Fumo:
I was glad to see that you amended the category B felony down to a category C felony because in most instances when judges are sentencing someone, the real issue for them is the victim and how to get them restitution. The higher you make the sentence and the longer the person is in prison, the less likely the victim is going to get restitution. I do not know if that would have the same deterrent effect. One thing that I think would have a deterrent effect, though, is if you changed it from a "person" to include "and/or financial institution." We all know that it is not just a person who is conducting the transaction; it is the financial institution that should know that this person comes in with $100,000 in cash to conduct a

transaction. They are the ones who really caused the economy to crash in 2008—the banking and financial institutions—and allowed it to happen. I represented several people in federal court who were straw buyers. Every time at sentencing, if we arrested or charged the president of Wells Fargo and the president of all of these banks with knowingly allowing this to happen and they are given a harsh penalty, then you have a deterrent effect. They know or should know what is going on. I would like to see you add something in there and go after the people who are really causing this problem. It is the institutions as well as the people involved.

Michael Kovac:
My intent was that the term "person" would be defined as it is in any other criminal case and that would include companies. I would have to go back and make sure that it does include institutions. In the past we have charged companies as a person because of the definition within the criminal statutes. That is what my intent was, and I will make sure that it does.

Assemblyman Fumo:
I wanted to get on the record that this would be the policy—to go after the financial institutions as well as the person. If you do have a person buying a house and he got it through a mortgage company, do not just go after the person and take the house away from his parents or whoever else he bought it for, but the officer and the president of the bank who allowed it to happen.

Michael Kovac:
As long as it is somebody within the institution who is acting with the criminal intent, I would have no problem with that. It is just a matter of whether or not we can prove that that person had the intent to assist in the laundering of funds.

Chairman Yeager:
This seems like a good time to reference our favorite NRS 0.039, where "person" is defined. That definition does include entities as well as natural people. It is always nice to reference NRS Chapter 0, which is often overlooked.

Assemblywoman Miller:
I have a follow-up to what Assemblyman Fumo was asking. Earlier the BSA laws were referenced and I compared this proposed piece of legislation to the current federal regulations. I noticed that the financial thresholds do not actually match what BSA laws do. Could you speak to the reason why they are not matching?

Michael Kovac:
Frankly, I would have it less than $5,000. I assume you are speaking about the spending provision being less than $10,000. Federal laws are $10,000, and I proposed $5,000. I would be happy to go even lower than that. What I see is a bunch of pimps on social media giving their girlfriends these luxury vacations, carrying Louis Vuitton luggage, and everybody knows that stuff is stolen. We cannot prove that the people with the criminals actually participated in the crimes, but they definitely know that all that is stolen and is

proceeds from other crimes. They definitely know that the money they are spending is the product of criminal activity. I think that should be punished to deter the spending of that money, to make it worthless so that it is not just the people who participate in the crimes, but the people who spend the money that is derived from those crimes.

Assemblywoman Miller:
With BSA laws—even with monetary instruments as opposed to actual cash—as you know, there is monitoring that occurs at a threshold of even less than $5,000 when it comes to the actual instruments as opposed to the actual physical cash. That being said, as we are talking about banks and personal and institutional liabilities, another gray area would be security boxes at a bank. While we know that bank personnel are held personally responsible for violating or participating in BSA laws, we know that safety deposit boxes seem to be a sovereign citizen within the bank, if I may. Is there a possibility where if that person knows what is being put in those security boxes, they could be included in this type of regulation?

Michael Kovac:
Are you touching on what Colin Haynes was touching on where we do not want to limit the laundering to just cash transactions?

Assemblywoman Miller:
Correct, the property portion, yes.

Michael Kovac:
We are in agreement with Colin Haynes' proposed addition to our amendment (Exhibit D) in so far as it covers any kind of property. That would include things that are put into security boxes and banks. It would just be a matter of, Can we prove that that person within the bank knowingly intended to assist in laundering money? With the proposal from Colin Haynes, yes, that would cover what you are talking about.

Assemblyman Roberts:
You mentioned that you are trying to interrupt escalating behaviors with these sovereign citizens. Does this give you the tools that you do not have today to be able to address these folks before they spiral out into more violent behavior or actually go on the offensive for violent acts?

Ashton Packe:
Yes, this would give us the additional tools. Right now we have a good statute on the books for the false liens that sovereign citizens will file through courts and banks, which is often tied to intimidating law enforcement but also to maintaining the mortgage frauds that they do. They take over properties. I would remind everyone that it is such a small segment of our population. They represent a very small number of Nevadans. A new law like this would not impact anyone who is not specifically predisposed to commit these kinds of crimes. The language is specific enough that it would give us the tools to combat them and hopefully deter someone who is maybe going down the ideological rabbit hole. They do not just jump head first into the pool, they take small steps. First, it might be not renewing their

driver's license; then they hear stories that are often inflated via social media. The law would definitely give us the tools.

It is modeled after a Texas law. The Texas law has been prosecuted successfully and, according to the information I have received, there have been legal challenges to it and they have had successful prosecution and success with this law. Once again, I think this would help us not only in Las Vegas but statewide to combat this growing trend of people who think that this is reality when the reality is you have to follow the laws, pay your taxes, have a driver's license, and things of that nature.

Assemblyman Daly:
In the original bill, section 1, subsection 3, you deleted the language "a regulation adopted pursuant to NRS 463.125," and then you added in, "any provision of federal or state law that requires the reporting of a financial transaction." What was in the regulation that you are not going to enforce, or do you think that is captured by state law? Then you say "any provision of federal or state law," but can we enforce federal laws or do we have to bring in the federal government in order to enforce the federal law?

Michael Kovac:
My intent was that, if we delete NRS 463.125 and replace it with state law, it would capture that. I do not think it would be any problem—if you were comfortable—if we included state regulation or law to make sure that there is no question about that. My intent was the general term "state law" would also include the Nevada Gaming Commission if they were to enact regulations that included reporting requirements again.

Assemblyman Daly:
I understand that. The way it is written now, it is very narrow. It says "a regulation" adopted pursuant to that law. But when you go to just state law, I do not know if you wanted to reference the regulations as well or if it covers it. That is a legal question, but I think the regulations have the effect of state law but they are not actual statutes.

The other question I have pertains to the amendment (Exhibit D) in section 1, subsection 7, where you reference Article 4, Section 38 of the *Nevada Constitution* and NRS Chapter 453D, which both relate to medical marijuana. I was just curious about the word "of" there; I think it should read "or" instead.

Aaron Ford:
Thank you. We have noted that.

Assemblyman Edwards:
I am a little uncertain as to what is the genesis of this bill. Has there been some kind of a sudden uptick in laundering activity? Is the Mafia coming back? Are we getting radicalized folks who believe in ISIS [the Islamic State in Iraq and Syria]? You said the sovereign citizens are a very small group of people. So what is bringing this forward that it suddenly

needs to be done? Could you also explain why $5,000 is the threshold? I know you said it could be less, but I am still not sure where that came from.

Aaron Ford:
You do not have to join ISIS for us to understand that it is important. We talk about sovereign citizens being right here in our state. As small as they may be, they are still growing and they are still the single largest dangerous threat to Nevada. I do not know if you were speaking tongue-in-cheek when you mentioned a different terrorist organization, but I wanted to make a point that the largest terroristic threat to the state of Nevada is a domestic organization. As you heard Sergeant Packe say, it has its roots and genesis in white supremacy. With regard to the other questions, I would like Mr. Kovac to answer those for you.

Assemblyman Edwards:
Can you also quantify the number of people that are involved? Is this 100 or 1,000 people?

Chuck Callaway:
We have numbers of cases that we have worked, but because these groups are often off the grid and operate under the umbrella that they do not recognize state law, it is difficult to have exact numbers. I do not know if Sergeant Packe has more information on that, but we are unable to give you exact numbers. There is a threat of this organization in our state, as the Attorney General said.

Aaron Ford:
During my presentation to the Nevada State Senate on February 11, 2019, I was asked a comparable question. We could not get an exact answer, but Detective Kenneth Meade of the Las Vegas Metropolitan Police Department estimated that there were approximately 500 to 600 active sovereign citizens in the Las Vegas Valley alone, and he further estimated approximately 10 contacts between law enforcement and sovereign citizens in the Valley per month. Again, it may seem small, but it is a growing number and it is a real threat.

Assemblyman Edwards:
Is this bill aimed at them alone or is this a broader range? Or are we just getting distracted by the sovereign citizen discussion?

Aaron Ford:
It is not broad at that alone, in fact, it is an amendment to address the sovereign citizen issue, but the basic crux of this bill deals with money laundering. However, working with law enforcement officers when they reach out to the Office of the Attorney General and ask us to consider something that can help them protect our state from the largest domestic terrorist threat in our state, we are going to oblige.

Michael Kovac:
I do not want to get into too many specifics for the purpose of not jeopardizing any pending investigations. This first came on my radar when the Panama Papers article came out and

Nevada was in virtually every single article as ground zero for the use of our laws to launder money. If you Google "Nevada and money laundering," it is not very complimentary to our state. Since that came on my radar, I have kept an eye out in my own investigations and have had undercover investigators record conversations with criminals who flat out own what looks like a legitimate store or restaurant and they explain to them what they do. They get drug proceeds, dummy up receipts and invoices in a cash-based business, nobody is the wiser, and they make the money look legitimate. We see referrals from the Nevada Gaming Control Board regarding people using fake social security numbers, sometimes real social security numbers, to try to make dirty money look like it is gambling proceeds. We are seeing these things in relation to our cases. It first came on my radar when it made national news and the more I look for it, the more I see. Without any stronger laws, I think that is going to continue and only grow from here.

Chuck Callaway:
Let me give you a real-time example, Assemblyman Edwards. Imagine that you brought a bill forward that was somewhat controversial and a group of folks within the state decided to hold their own trial against you. They had this underground grand jury indictment of you and subsequently found you guilty of treason or some other crime in their eyes. Legal documents were prepared that were obviously fake but for all intents and purposes real, and these documents were sent to you telling you that you are on notice that you have violated the laws that they deem to be real laws, which are not actual laws of the state. You receive these documents which are stamped with a seal, written up to look real, and now you are concerned. You might hire an attorney or take some action based on this. If nothing else, it is intended to intimidate you with the result that you decide not to pursue your bill. This is just an example of the type of activity that this amendment is meant to address. It is activity that is used to intimidate or used to put people on a mock trial. Several years ago we had a case where a group of sovereign citizens held a mock trial, planned to kidnap a police officer, hold a trial for that officer, and subsequently execute that officer. That plot was foiled because of an undercover operation. So this is a real situation that is occurring. This is not something that we just came up with—an idea for an amendment—for a couple of folks running around doing crazy things. If we were not seeing this activity occurring and did not see a need for this, we would not have reached out to the Attorney General's Office to propose this amendment.

Assemblyman Edwards:
And as you may recall, I am quite familiar with that kind of situation personally.

Assemblywoman Nguyen:
Mr. Kovac had mentioned something about there being a concern with pimps and their girlfriends receiving trips and Louis Vuitton luggage. I had some concerns about this law having the effect of going after potential victims of sex trafficking or other forms of human trafficking if we are referring to girlfriends of pimps receiving benefits. I am worried that this law would be used to target people who potentially are victims.

Michael Kovac:
That was probably the worst example I could possibly have given you. The better one would be a fraudster who gives his wife the same things that I was talking about with pimps. I would not do what I just suggested that I would do. A better example is the fraudster who launders money and his girlfriend, wife, or both spend the money and it is obvious that they know it is from dirty money.

Assemblywoman Peters:
I just want to be clear that the intent of language in section 1, subsection 2, "knowledge that the property is directly or indirectly derived from any unlawful activity," would not impact victims of sex trafficking or a lifestyle that results in prostitution because they have no other alternative. I just want to make sure that we are not unduly putting those folks in a victim position.

Michael Kovac:
I just want to reinforce that I am not a terrible prosecutor who would make that awful decision to go after the victims in those cases. It was not the example I should have given. It is not what I would do, and I do not imagine that any other prosecutor would either.

Aaron Ford:
I completely get the concerns and the questions. This Attorney General and my chief would not prosecute the type of case you indicated. With that said, I understand the importance of language in legislation and we want to ensure that for a future attorney general who does not share the same concerns that I do. You will hear bills very soon from my office on sex trafficking, which is to protect the survivors of sex trafficking. We will work with the Legislative Counsel Bureau to ascertain whether there needs to be some tightening of the language. We will do that, but rest assured the example he gave was a horrible one. To answer your question, it is not the intent of the Attorney General or this bill to do the things you are concerned about.

Chuck Callaway:
Assemblywoman Peters, you may recall from the presentation we did the other day with Assemblywoman Tolles on our human trafficking bill, we have a process at Metro when dealing with victims of sex trafficking. When someone is arrested for a vice-related crime, that person is screened to determine if they are, in fact, a victim. If they are a victim, they are funneled to the proper resources. First of all, I do not do these types of financial crimes, but I am not aware that we target the actual sex worker victims with these types of financial crime charges. If it were to occur, there is a screening process in place to determine if they are a victim and to get them the proper resources.

Assemblywoman Peters:
My concern is not for the three of you up here, but we have 17 counties in the state that are not all represented by you three here. My concern is the enabling language, which could have those undue consequences for people who really should not be a part of this.

Chairman Yeager:
Thank you for the presentation on A.B. 15. I will open it up for testimony in support of A.B. 15 either in Carson City or Las Vegas.

Jennifer P. Noble, Chief Appellate Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
We thank the Attorney General for bringing forth this legislation and for working with us on it. We are in full support.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We certainly support this bill.

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

Chairman Yeager:
Do we have any other testimony in support of A.B. 15? [There was none.] I will open it up to opposition testimony either in Carson City or Las Vegas.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We got the amendment (Exhibit D) this morning and I will say that, generally, we are happy with the changes made from the original bill. With respect to section 1, subsection 2, we generally treat an "attempt" under the law a little bit differently than a completed crime. If we could have an adjustment there, that would ease some of our concerns. We appreciate it being lowered from the category B felony to the category C felony. Generally a category C felony is in the 1 to 5 year framework rather than a 2 to 7 year sentence. I do understand that if it is spelled out differently under a law, it could be a different punishment given the way NRS is structured. We appreciate Attorney General Ford's office for both bringing us into the conversation early on the bill and talking about some of our concerns. Originally we were concerned about the provision in section 1, subsection 7, with respect to the marijuana industry, but it was changed in response to some of our concerns.

I will say that Assemblywoman Peters' question is well taken, and although Director Callaway said vice-related crimes, a sex trafficking victim is not always related to vice-related crimes, so not always the trespassing or the soliciting they are being caught for. The client that I had was being forced to use stolen credit cards, which perhaps could bring her under this framework and make it more difficult for us to do that. I do understand that Metro is trying to do a better job of recognizing when a person is a victim of sex trafficking, but I think this is something that we are all struggling with in the criminal justice system. I think Assemblywoman Peters' concerns are well taken and they may not just be captured as the typical vice-related crime.

Lastly, on the new section 3 in the amendment (Exhibit D), I will agree that sovereign citizens are a problem. The only issue we have with the language in section 3, subsection 1, where it talks about any person who causes or prepares the summons, complaint, judgment, and order, but the "other legal process," for lack of a better term, is a "squishy" term. Sovereign citizens are known to file several, what I call, fugitive documents—documents that should not be filed in court—that may bring them under the framework under this law. They are allowed to file these ridiculous motions, and maybe that is an action we do not want to punish with a category D felony, but that is where we do want to punish the other actions like Director Callaway was talking about. Those are some of the concerns that we have with this bill.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
I echo the statements of Mr. Piro, and I would indicate again that we really appreciate that Attorney General Ford's team is willing to work with us. We have met with them on several occasions, and we look forward to working with them to ensure that this language is tightly worded to ensure that victims are not captured in it.

Chairman Yeager:
Do we have any other opposition testimony to A.B. 15? [There was none.] Do we have any neutral testimony to A.B. 15? [There was none.]

Aaron Ford:
Rest assured that we will work with everyone between now and hopefully a work session that this Committee will grant us to tighten up language to ensure that we do not have those types of issues that we have to address. I did want to note that one of the concerns Mr. Piro raised, however, regarding attempt, is existing language in the statute. It is not new language in our bill. We may need to look at a different alternative elsewhere for that type of change.

Michael Kovac:
I just wanted to thank everyone for their consideration. The point was well taken about not using this to punish victims. I am sure if that is still a concern going forward, we can figure out some language to take care of that and make sure it will not be a concern if this law is passed.

[(Exhibit E) is a letter to members of the Assembly Committee on Judiciary dated March 13, 2019, in opposition to Assembly Bill 15, authored by Jim Hoffman of the Legislative Committee of the Nevada Attorneys for Criminal Justice. It was not mentioned, but will become part of the record.]

Chairman Yeager:
Thank you to everyone for presenting this bill. I will formally close the hearing on A.B. 15. I will now open the hearing on Assembly Bill 16, which increases the time for law enforcement officers to execute and return search warrants to obtain DNA samples.

Assembly Bill 16: Increases the time for law enforcement officers to execute and return search warrants to obtain DNA samples. (BDR 14-423)

Aaron D. Ford, Attorney General:
With me today is Mr. Kyle George of the Office of the Attorney General to discuss the contents of Assembly Bill 16.

Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General:
Under current law, a search warrant must be executed and returned to the court within ten days of issuance. This bill seeks to expand that time only for DNA warrants that are issued pursuant to a lawful judicial process (Exhibit F).

Obtaining a warrant is not trivial. To obtain a warrant, law enforcement must first demonstrate to a judge that there is probable cause that the evidence they seek is related to a crime, and then describe with particularity where they expect to find that evidence. They further have to explain the basis for the belief that the evidence will be found there. What makes DNA a little bit different, though, is the nature of DNA versus other tangible evidence. Evidence of a crime may be fleeting. Evidence that exists in a place on a particular day may not be there on a future date.

A warrant is usually limited because we want to make sure that any intrusion on a person's Fourth Amendment rights is cabined as tightly as possible. We do not want to give law enforcement a blanket pass to intrude upon any Fourth Amendment rights. For that reason, as the passage of time erodes the reliability of the basis for the underlying warrant, the constitutionality of the warrant correspondingly fades. Once that window closes, in Fourth Amendment parlance, we say the warrant has become stale. That is where the difference is between traditional warrants and DNA warrants.

With respect to property warrants, the warrant is executed at a specific location where the evidence is likely to exist for a short period of time. Conversely, with DNA warrants, location of the subject is transitory. We do not know where we will find that person at any given time. But the evidence still does exist within that person indefinitely. The evidence that we seek never goes away. It never becomes stale in that sense. For this reason, staleness is not an issue with DNA warrants specifically because DNA is immutable. The difficulty lies with law enforcement trying to locate a subject and obtaining those DNA samples within that 10-day period when the subject is actively trying to evade law enforcement.

Under the current system, if law enforcement makes contact with a subject after 10 days, the warrant must be renewed before the sample can be compelled from the person. We have heard from law enforcement that the delay in obtaining a new warrant may result in losing track of the subject and sending the process back to the starting line. They need to apply for a new warrant, locate them again, and then hopefully find them within that 10-day period. This bill seeks to modernize the process by expanding that time to a period of 6 months so that we do not have to go through this stop and go. We do not have to have law enforcement go to the courts every 10 days to renew a warrant for a subject while they are trying to track

him down. Finally, expanding the period is really an issue of judicial efficiency as well as Executive Branch efficiency because we do not have to keep repeating the process over and over again in the hopes of tracking someone down.

We submitted a couple of amendments (Exhibit G) to the bill. When this bill was first introduced, we asked for a 1-year period. However, based on our discussions with stakeholders, including public defenders, we reduced that to a 6-month period. We believe that is a reasonable time. To your comment, Chairman Yeager, about everyone's favorite *Nevada Revised Statutes* (NRS) Chapter 0, we have amended the language from "shall" to "must." That is based on the dictates of NRS Chapter 0 when the subject is an object, not a person.

In closing, I would like to thank the district attorneys, public defenders, and other stakeholders. We have had a lot of discussion on this bill and we believe, through their input and guidance, we have produced a stronger bill than it was as originally introduced.

Assemblyman Roberts:
Could you explain why you could not wait until you locate the person and then get a telephonic warrant? What are the challenges with that and why would you need this bill to clean that up?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We have Lieutenant Raymond Spencer in Las Vegas, who I believe can answer the question from Assemblyman Roberts.

Raymond Spencer, Lieutenant, Homicide Bureau, Las Vegas Metropolitan Police Department:
The issue that we have run into in both our homicide and sexual assault investigations is, once the warrant is obtained, we do not know where our suspect is. They are fleeing and actively taking measures to hide from the police. If we obtain the warrant and we do not find that person within 10 days—say we find them 12 days later—the detention clock starts. If the person is stopped, we have up to 60 minutes to obtain a warrant. At that point, we would send detectives and start the telephonic warrant process. In the best case scenario, we are able to obtain that in under 60 minutes. But that also causes longer detention for the accused. With the passage of this bill and our having the 6 months to obtain that warrant, the person accused does not have to be detained any longer than necessary to obtain, with a very low level of intrusiveness, a buccal swab from him or her. Again, having the warrant in hand allows us to obtain that very quickly versus detaining someone any longer than necessary on a warrant that was already granted by a judge previously.

Aaron Ford:
I appreciate the example he just gave because it also goes back to something I said to you on the day I presented our overview. Our job is to protect the constitutional rights of everybody, including those that we may ultimately accuse of something. If we can shorten the time

frame that they are detained even for a DNA swab, then we want to be able to do that, and this bill allows us the ability to do so. As you know, I inherited many of these bills from the previous administration and I worked with stakeholders to ensure that we could refine these in a way that fits the priorities that I have established. This initial bill asked for 1 year, but I asked for 6 months, again looking for the right balance of constitutional rights and providing law enforcement the ability to do what they need to do.

Chairman Yeager:
Do we have any other questions on A.B. 16 from Committee members? [There were none.] Well done in referencing NRS Chapter 0 for a second time this morning. I will open it up for testimony in support of A.B. 16.

Chuck Callaway:
I am here in support. I think Mr. George hit the nail on the head: When you take into perspective a search that is done for a house or vehicle, typically those environments are static. They are not moving if you are getting a search warrant for a weapon, drugs, or other contraband. It is easy to secure a residence while you are obtaining that warrant, and 10 days is obviously a long period of time for a search warrant of that nature. However, if you have a homicide scene where you recovered DNA of the suspect and you have witnesses who say, I saw the boyfriend at the house, or, I saw the neighbor at the house, now that person is a possible suspect; you need to obtain their DNA to compare, and that person knows you are looking for them. They are hiding out with friends, they are moving to other states, or they are trying to get away from you. Obviously, 10 days is very problematic. We are here in support of this bill, and we appreciate your attention to it.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
We are in support of A.B. 16 and the proposed amendment (Exhibit G). I am not going to repeat what others have said today. We thoroughly support the statements and policy reasons behind this bill. I do want to take the time to thank Attorney General Ford and his staff as we have moved through the process on all of these bills. They have been wonderful to work with.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We echo the comments made prior, and thank Attorney General Ford for working with us on this. We support A.B. 16.

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office:
We want to take this opportunity to thank Attorney General Ford for bringing this measure forward, and we are proud to support it.

Chairman Yeager:
Do we have any other testimony in support of A.B. 16? [There was none.] Do we have any testimony in opposition to A.B. 16? [There was none.] Do we have any testimony in neutral

to A.B. 16? [There was none.] Concluding remarks have been waived. I will close the hearing on A.B. 16.

I will now open the hearing on Assembly Bill 55, which revises provisions governing immunity for a witness who is compelled to testify or produce evidence. Welcome back to the table, Attorney General Ford.

Assembly Bill 55: Revises provisions governing immunity for a witness who is compelled to testify or produce evidence. (BDR 14-416)

Aaron D. Ford, Attorney General:
I am here to open the discussion on Assembly Bill 55. With me today is Michael Kovac, Chief Deputy Attorney General, and he will discuss the bill.

Michael C. Kovac, Chief Deputy Attorney General, Criminal Prosecutions Unit, Office of the Attorney General:
I am not sure how familiar everyone is with the bill, so I just want to touch on some basics before I get to the actual statutes (Exhibit H). Both the *U.S. Constitution* and the *Nevada Constitution* protect an individual's right not to be compelled to be a witness against himself. There are situations where the state may wish to compel a witness to testify about the actions of another where such testimony might also implicate that witness in a crime of his own.

The government is able to compel such testimony where the witness is granted immunity. The question is, what level of immunity must be given to the witness in order to adequately protect their right to be free from self-incrimination? There are two categories of immunity here:

- Transactional immunity, which is the broadest form of immunity. It provides immunity from prosecution for any event or transaction described in the compelled testimony.

- Use and derivative use immunity provides immunity from the use of compelled testimony or any information derived from that testimony in future prosecutions against the witness. In other words, after such a grant of immunity, the state can still prosecute if we showed that our evidence came from another legitimate source of information.

When the current Nevada laws were created in 1967, they were consistent with existing federal law in that a witness could not be compelled to testify if the testimony would implicate him in another crime unless the witness was provided with transactional immunity, the broadest form of immunity. In 1972, five years after the Nevada laws were created, the United States Supreme Court recognized that the government need not go so far as to grant transactional immunity in order to compel a witness to testify while still protecting their rights against self-incrimination. Instead, the court correctly recognized that immunity from use and derivative use of compelled testimony and information is coextensive with the scope

of the privilege against self-incrimination, and therefore is sufficient to compel testimony over a claim of privilege.

Nevada's relevant statutes are based on an incorrect interpretation of the right to be protected from compelled self-incrimination, an interpretation that provides witnesses who may be criminals with transactional immunity before being compelled to testify. This was held in *State v. Tricas*, 128 Nev. 698, 702 (2012). This type of immunity goes far beyond that which is now contemplated by the United States Supreme Court.

More importantly, while a witness from whom we seek to compel testimony may appear to be a minor player in our case, he may have a much larger role in a criminal enterprise than we know. And that same witness may be the primary target of an investigation being conducted by another law enforcement agency that we are not aware of. If we were to grant that witness transactional immunity in our case, we would make that witness immune from prosecution in the other case if the witness were to testify about what he did in relation to that other case.

The greatest risk I have seen from this scenario relates to frauds carried out by groups of individuals. Oftentimes, one defendant—we will call him "the student"—learns how to commit a certain type of fraud while working for another defendant—we will call him "the teacher." Once the student acquires the expertise in a particular fraud, he will break off and carry out additional, more damaging frauds in other jurisdictions with other individuals. In that scenario, under the current law, if we were prosecuting that original set of frauds, we might want to give the student immunity in order to compel his testimony against the teacher. What we do not know is that he actually broke off and is now a more prolific fraudster than the teacher was. If the student was granted transactional immunity and testified about the frauds he was committing, he would be immune from prosecution from all the frauds discussed in his testimony. That would mean that he would be immune from prosecution by my office, by other state prosecuting offices, and by federal prosecuting offices.

On the other hand, if we were able to compel testimony through only the grant of use and derivative use immunity, we would not run that same risk. We would still protect his freedom from self-incrimination. There would be no problem with that because we would not use the testimony that he provided in that particular prosecution. But we would not jeopardize investigations being conducted by other agencies.

Put simply, there is no basis to provide witnesses with more immunity than is necessary to protect their constitutional rights. It serves no legitimate purpose and may cause unintended and unnecessary harm to other investigations and prosecutions. Thank you for your time, and we welcome any questions you might have.

Richard Casper, Deputy District Attorney, Douglas County District Attorney's Office:
Thank you for the opportunity to geek out a little bit about criminal procedure, which is not something I often get to do. I wanted to speak in favor of this bill and echo the comments made by Mr. Kovac. I wanted to talk about the importance of the truth-seeking function of

our court system and how the current immunity statute in Nevada—the transactional immunity—is sometimes called "blanket immunity," in which, colloquially, you will hear terms such as "the witness was given an immunity bath," similar to perhaps Achilles being dipped in the River Styx and being protected thereafter from any prosecution whatsoever.

What the bill and amendment (Exhibit I) proposes to do is to change that from the transactional immunity, which grants more protection than is necessary or even, I would suggest, desirable, and replaces it with what is required by the *U.S. Constitution*. It replaces it with a right to protect any witness that is commensurate or coextensive with our Fifth Amendment of the *U.S. Constitution*. I would also note that the *Nevada Constitution*, in Section 8 of Article 1, mirrors that same language, which says that no witness will be compelled, in any criminal case, to be a witness against himself.

I would just start with the general principle here and I quote from the United States Supreme Court in the case of *United States v. Nixon*, 418 U.S. 683 (1974), as a result of the Watergate scandal in 1964. The United States Supreme Court said that "the public . . . has a right to every man's evidence,' except for those persons protected by a constitutional, common-law, or statutory privilege . . . . Thus, the Fifth Amendment to the Constitution provides that no man 'shall be compelled in any criminal case to be a witness against himself.'" ". . . these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth."

I wanted to point out today that our current statute as it is written goes further than is necessary, and is therefore a derogation of the search for truth. The law that we currently have in Nevada, as Mr. Kovac said, was passed in 1967. In 1970, the United States Congress passed a law upon which the amendment to A.B. 55 is based, which grants use and derivative use immunity, or sometimes is referred to as "use immunity" for short. That statute is the basis for the bill before this Committee. That statute was upheld as constitutional in the United States Supreme Court case of *Kastigar v. United States*, 406 U.S. 441 (1972). I would also note that as of 2013, federal law in 33 states provided use immunity or the more limited immunity that is proposed in A.B. 55. Thirteen states, including Nevada, provide complete transactional immunity, and four states provide a hybrid application of either transactional or use immunity.

I wanted to mention a few cases in which transactional immunity has caused problems because talking about criminal procedure and the need to seek the truth and to provide protections is not always necessarily the most compelling thing to discuss. There are a few cases that put this into perspective. In New York, which has a similar statute that grants transactional immunity similar to Nevada, there was a case called *Matter of Carey v. Kitson*, 93 A.D.2d 50 (2d Dept. 1983), in which a business executive was questioned under a grant of immunity by the Suffolk County Grand Jury in connection with his company's possible victimization in an extortion scheme. He was indicted years later by a grand jury working with a different prosecutor for sales tax evasion. Because the executive's description before the earlier grand jury had included a discussion of his company's financial status, the court in

New York held that he could not be prosecuted in the tax case because of the grant of transactional immunity that had been given to him.

Similarly, in another New York case, *People v. Henderson*, 257 A.D.2d 213 (3d Dept. 1999), there was a complaining witness in a police brutality case who had also been arrested and charged with assault for his participation in a completely separate bar fight. A special prosecutor handled the police investigation and called that witness, the complainant, to the grand jury again with a grant of immunity. Because this witness's description of his post-arrest assault "touched upon" the fight, the assault case handled by a different prosecutor had to be dismissed because of transactional immunity.

The presence of transactional immunity in a Douglas County District Attorney's Office case has caused some heartache and problems for us. There was a case in 2008 that our office handled in which an individual, encouraged by his girlfriend, entered the home of that girlfriend's ex-husband late at night and, using a shotgun, killed him while he was sleeping next to his current wife. The individual escaped and unfortunately the police and investigators in the case were not able to identify the perpetrator without the assistance of his girlfriend at the time. She had aided and abetted him as well as acted as an accessory in helping him to evade capture and detection and hide evidence after the fact. We had to make a difficult decision based on the statute in place. That girlfriend, who had aided and abetted the defendant, was given transactional immunity. She is unable to be prosecuted for anything at all related to the murder regardless of whether or not we were able to come up with any independent evidence to charge her. It is not to say that necessarily she could have been prosecuted even under the more limited use of immunity, but the transactional immunity creates an absolute bar and prohibits the state from even attempting to see whether there might have been independent evidence which could have been used to prosecute someone who aided and abetted a person to kill someone with a shotgun while he was sleeping.

Another case in Nevada is *State v. Tricas*, 128 Nev. 698, 702 (2012), in which there was a person who pled guilty to a category C drug crime. She was pending sentencing, and in her presentence investigation report she indicated, in her letter to the judge, that the drugs she had possessed was done at the behest of a co-defendant and she was afraid of him. The prosecutor in that case, with a grant of immunity, placed her on the stand in the case against the co-defendant. The Nevada Supreme Court, probably rightfully so because of the way the statute is written, held that her case had to be dismissed. This case had to be dismissed despite the fact that she had pled guilty, that her statements were not actually going to be used against her in any way, and she was pending sentencing. That is the one case in Nevada that has addressed this issue.

I would just say that, although this can seem somewhat peripheral and somewhat technical, the results here can be real. When a witness is given transactional immunity, it provides an opportunity—in fact an incentive—for that witness to be granted a windfall to which they are not entitled. I would urge this Committee to pass this bill with the amendment (Exhibit I) to make the rights of the defendant commensurate with the protection and the rights of the state so the Fifth Amendment is given its adequate and appropriate protections.

Chairman Yeager:
Again, we should probably be getting continuing legal education credit for these types of presentations because this is very technical and a little bit in the weeds. I want to make sure that I understand and it is clear for the record what the amendment (Exhibit I) is seeking to do. The way I read current law in Nevada, we only have transactional immunity. The way the statutes read now, there has to be a motion made to the court and then the court has the decision whether to essentially grant that motion and provide immunity or not. For instance, in *Nevada Revised Statutes* (NRS) 178.578, the court can deny the motion and provide reasons for denying that motion. What I read the amendment is trying to do is to say we should have two types of immunity in Nevada law, the transactional immunity and also the use and derivative use immunity. But it looks like the amendment is taking out the judicial discretion, because the way I read it, it essentially says the state may grant immunity, and then in section 1, subsection 2 of the amendment (Exhibit I) it says, "upon the request of the prosecuting attorney, the court shall issue an order subject to the provisions of NRS 178.574." It does not look to me that a court would be able to not grant immunity. The question that arises out of that is what was the thought process for taking that—what I think could be seen as a judicial check when we are talking about Fifth Amendment rights—out, but essentially the court must compel the testimony in that circumstance?

Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General:
Our analysis on this is that the grant of discretion is an exercise of prosecutorial discretion and therefore not subject to judicial review. One of the advantages of looking and analyzing from that lens is that we are actually declining to incriminate or to prosecute people based on the larger need. We look at it as a balancing test—what are the needs of the state for some larger issue that the judge may not be aware of versus what are the considerations behind prosecuting that individual. We believe that taking it out of the hands of the judges and leaving it up to the district attorneys is an exercise in prosecutorial discretion, saying we will not prosecute this person in exchange for this court-acknowledged grant of immunity.

Richard Casper:
There are actually several cases about this that I found as I was researching this. The grant of immunity is largely a function of the Executive Branch. It is part of the prosecutorial privilege. It is the state that grants the immunity, because they are saying, We are not going to prosecute you; we are not going to use this against you. It is their grant of immunity. The court is there to enforce—to make sure that the lines and rules are followed—that the state does not violate that grant of immunity by later prosecuting someone to whom they have granted immunity. There was a case in Florida in which the court held that a court had granted transactional immunity over the objections of the prosecution, and they held that it violated the constitutional doctrine of separation of powers between the Judicial and Executive Branches of the government.

Chairman Yeager:
The way I read the proposed language that you are bringing forward, the judge would have to issue an order of immunity. What happens if the witness still refuses to cooperate? The amendment (Exhibit I) indicates that the person would be in contempt of court potentially. In

your experience working in the state courts, have you gotten to that position—even under the current law where a judge grants the order, and someone is still refusing to testify—do judges typically assign an attorney or allow someone to talk to the potential witness to discuss what the ramifications of that would be? I think in federal court they routinely do that, but I am not sure if you have experience in state court about what a judge does at that point where the person is still refusing to testify and they are considering contempt.

Michael Kovac:
The need for this bill is the reason we have not gotten to that point, at least from my perspective. There has been one instance where I have granted transactional immunity but I did it with a lot of hesitation. When you do that, it is a huge gamble because you do not know if you are granting it to somebody who has a much larger role that you are not aware of and you will jeopardize another jurisdiction's investigation. I have not gotten to it just because after that first time, I am still hoping that I do not get a complaint from another law enforcement agency. Going forward, I have cases that are pending right now where I want to give a witness immunity because I know they can give me good information that I absolutely need. I also think that they have a pretty big role in it and it might be much bigger than I even know at this point and I do not want to jeopardize a possible prosecution going forward. I have not gotten to the point where there is that issue with contempt, but that is only because the law is so flawed right now, it has not come up.

Richard Casper:
In my experience, this has come up a few times in my career, but not frequently. Because jail time is a potential for that person who is refusing to testify, the court has let him know he has the right to an attorney and if he cannot afford one, one will be appointed for him.

Chairman Yeager:
Under the framework we have now under transactional immunity or the use or derivative use immunity—if we were to pass this bill—does that shield to the witness extend beyond the borders of Nevada? Could they be prosecuted in other states, or are we only able to capture activity or potential prosecution from law enforcement agencies within our borders?

Richard Casper:
There is a 1964 United States Supreme Court case that dealt with that and it is has been upheld, I think most recently quoted in Alaska within the last few years. It is pretty clear that when you are crossing jurisdictions outside the state—Nevada to California or Nevada to the federal system—the immunity that applies regardless of the immunity that was granted becomes use and derivative use immunity when you are leaving that jurisdiction.

Assemblywoman Miller:
First, I would like to say regretfully, Mr. Kovac, I need to let you know that your example of teacher and student was not a good example either. So I look forward to your next bill to see what example we are going to hear.

What I am interpreting from this bill is that you are going to compel someone to waive, break, or violate their own Fifth Amendment constitutional right not to say anything that could be used against them. I understand the idea of making this for this specific case or this specific instance, but what is the guarantee that the information is not going to be used against an individual later, on the next arrest or the next trial? We all know in a courtroom, the judge says, Strike that. Strike what, we all heard it; it is in there. Even in our personal lives as humans, we say, Tell me the truth. But at least in my mind, it is never leaving my mind, it is always going to be in the back of my mind. Is that going to come up later next time? I just have too much concern about this information being used later. In even the most dramatic case, the person provides the information and then we actively go after that individual to arrest him on something else, like a search warrant; it is not just, no holds barred, go to the house to see if you can find something. What specifically are you looking for?

Michael Kovac:
The law is clear that once the immunity is granted, the prosecution is going to bear the burden of showing that any evidence that is used against that particular person was not derived from any of the testimony that was compelled. The prosecution will bear that burden. Beyond that, if you have your doubts, you have your doubts. But that will be for a judge to determine whether or not the prosecution made use of that prior compelled testimony. That is the entire purpose of the use and derivative use immunity, to not allow the prosecution to use that.

Richard Casper:
I wanted to echo that and also say there is quite a bit of case law on this and there are quite a few examples in which the prosecution has not been able to overcome that burden in other cases. I would point to the Iran-Contra Affair under the Reagan Administration with Oliver North in which the prosecution bore that burden and was unable to overcome that burden despite every effort to do so. It is a very heavy burden. If someone comes in and states that they have previously testified under a grant of immunity, that triggers the state then having to prove that every piece of evidence that they are going to use has been independently obtained and did not come as a result of the testimony that was given as a result of that grant of immunity.

Aaron Ford:
Assemblywoman Miller, excuse my colloquialism, but "I feel you." I understand what the concern is; I get it. Our answers may be unsatisfactory to you, but the answer is, in the simplest terms, we have procedural safeguards to protect against that. The system is flawed, absolutely, and there are ways people sometimes try to use those flaws to get around the protections we have set up. All that we can commit to you right now is those procedural safeguards we anticipate will be used. We are going to have our burden to demonstrate, when we are prosecuting someone who has been granted immunity, that we have gotten this as Mr. Kovac has indicated, and this evidence is independent of and is not related to the information we learned in the immunity grant. To your larger point about requiring someone to say something against them, that is already in the law. We have the grant of immunity that

does that already. This is an attempt, in my mind, to bring us into accordance with federal law, and I do not say that lightly because sometimes federal law is not the type of law I want our state to be following; sometimes it is more onerous and more restrictive. I made it a point when I inherited this bill to research when the law changed and when we got out of step with it. The fact is that we are 46 years out of step with the law. That is how old I am. This law changed when I was born. I think it is appropriate. I know it is an uphill battle in some people's mindsets. I get it and I know why, but I would not be here before you advocating a bill that I do not think strikes the right balance in protecting the constitutional rights of someone against self-incrimination.

Assemblywoman Miller:
I appreciate that response. But I will say that I will be watching.

Assemblyman Daly:
The hill is pretty steep. I am just trying to understand and, again, I am not an attorney either. You have the constitutional right to not self-incriminate. You are going to get an order compelling you to testify. That cannot happen unless there is some other offer on the other side. In other words, you have to testify, you cannot take the Fifth Amendment. We are going to compel them somehow; there is an offer that gets made in exchange for your testimony and we are going to give you complete immunity right now. People understand that, correct?

So you want to make it so we have this other kind of immunity to where we can maybe take that back is the way I am looking at it. I understand that you may disagree. What happens when you are compelled to testify in contradiction to the Fifth Amendment?

Kyle George:
I think one of the sources of confusion—I hope this addresses Assemblywoman Miller's concern as well—is this perception among lay people that the Fifth Amendment says you cannot be forced to speak, period. What the United States Supreme Court has said is, you cannot be forced to speak when there is jeopardy attached to this, when you are in danger of being incarcerated as a result of being compelled to speak. The common understanding of the Fifth Amendment is far less nuanced than the legal application of the Fifth Amendment. I think that is where the confusion is coming in, where this bill appears that we are forcing people to testify in violation of their own Fifth Amendment right when the United States Supreme Court says if you force them to testify, you cannot do anything against them with that information. That is really the nuance that I think we have not done a good job at articulating today. I hope this sheds a little light on that. The real issue is the Fifth Amendment is a protection of an individual against the assertion of governmental authority over them. What this bill is saying, in line with what the United States Supreme Court says, is you can force them, but then you cannot do anything that is adverse against that individual with that information. That is what we are hoping to capture in statute with this bill.

Assemblyman Daly:
I understand it that way. There is a transaction like we were talking about, and that is why we call it transactional immunity. We want you to testify and give up this right and now we can compel you because we are then going to take you out of jeopardy. There is a lower tier to that, right? I know the Attorney General is saying that we are out of step, but we can have the provisions we have now and not be in violation of any law. We can have a better standard than might be allowed. I just have trouble with it is all. I understand it and I think I get it. I am not saying I agree.

Richard Casper:
I understand and I think that these concerns are actually extremely well-founded because there is this concern that someone's civil liberties are being violated—that the government is going to abuse this in some way—and I totally understand that and I see that. I want to make it clear that this bill does not attempt in any way to take away anyone's civil liberties. In fact, they maintain those liberties, they maintain their rights under the Fifth Amendment. What it does is to make sure that this would only apply to someone who has at least allegedly violated the law in some way. Usually this occurs in situations in which you have various co-conspirators involved in some kind of criminal enterprise. That person is not compelled to testify against themself and that testimony will not be used against them. What the current law does, and what it provides for under transactional immunity, is a windfall. There are these examples out there that you will hear when asked the question, When was the last time you saw Bill? The witness who is under the grant of immunity says, The last time I saw Bill was Friday when I killed him. Because there has been a transactional grant of immunity, that person therefore can never be prosecuted for that killing of this other person. That is an extreme and simplistic example, but that is the idea behind what the current transactional immunity provides. When you do the use and derivative use immunity, which this bill provides, it takes that away and says, We are going to put you back on the same playing field. We are going to make it as if you never testified. You were never compelled to testify. That is what this bill does. It puts you in substantially the same situation as if that had never happened, but it does not grant the witness the additional windfall or additional benefit that the current statute provides.

Assemblywoman Tolles:
I just want to make sure that we summarize the different forms of immunity so that I am clear because we have had some good back and forth conversations. I have to say this conversation reminds me of *Lethal Weapon* and diplomatic immunity. I think that is kind of what you are getting at actually. You have somebody who claims that they can just continue to abuse their permanent immunity in the future. Am I somewhat on track there, that we are trying to make sure we are clarifying when this immunity applies and when it does not? You talked about hybrid models in other states. You talked about the current model. Before we close things out, could you just summarize those models?

Richard Casper:
The transactional immunity basically says anything that you testify to and anything related to your testimony, you can never be prosecuted for anything. It is extremely broad and is often

called "blanket immunity." The other immunity gets confusing because it is given the term "use and derivative use" immunity. The reason it has both of those terms within it is because back a century ago, "use immunity" by itself—meaning your testimony will not be used against you—was found to be unconstitutional, not enough to overcome the Fifth Amendment. You also needed a derivative use, meaning not only the things you said, but anything that could be used from it. That was part of the concern about an investigation that takes place; you use some of that and you end up going down the road and have the fruit of the poisonous tree situation. Use and derivative use immunity is the other form we are talking about. Nothing you say and nothing derived from what you say can be used against you.

Chairman Yeager:
Do we have any additional questions from Committee members? [There were none.] I will now open it up for additional testimony in support of A.B. 55.

Jennifer P. Noble, Chief Appellate Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
I know we spent a lot of time talking about immunity this morning by two attorneys who know far more about it than I do, but I would like to say that the Nevada District Attorneys Association really appreciates all the hard work that the Office of the Attorney General and Mr. Casper have done in reference to this bill and the amendment (Exhibit I). We are in full support.

Chairman Yeager:
Is there anyone else here in support of A.B. 55? [There was no one.] I will now open it up for testimony in opposition to A.B. 55.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I think part of the problem with this bill right off the bat is you guys can see immediately how much we talked about transactional and derivative immunity. Just think about the litigation that we are going to go through just doing this right now. Nevada's law as it is, is clean. There is a good thing about certain states, like Assemblyman Daly brought up. The *U.S. Constitution* is the floor of our rights and states can enact stronger rights on top of that. They are not prohibited from doing that. Nevada does have a stronger bill. The example that Mr. Casper brought up, obviously I was not involved in the case, but it sounds like he might not have even had a case if he had not offered that immunity at all. So they may not have even had the prosecution they had without that. I will tell you that, as Chairman Yeager brought up, where we are taking the judge out, and then we talk about prosecutorial discretion, it is always a little bit concerning because this bill seems like it is a "I am going to have my cake and eat it too" bill. We take the neutral observer, the judge, out of the picture, and we say, Hey, we are the prosecutor, trust us, it is our discretion, do not sweat it. Those are some of our concerns.

Another concern that Assemblywoman Miller brought up is that yes, the state district attorney could then prosecute and they could say, Hey, we are not going to use any of your testimony to prosecute you in the federal system, but we are going to hand this case over to the feds where you can go get this person now because we have derivative use immunity. Although we will not "use" your testimony, we are definitely going to use your testimony as a roadmap to find the evidence we need to act like we did not use your testimony but we got the evidence we needed without using your exact testimony. It is one of the reasons why we have to conflict off cases as an attorney. In my office, sometimes victims are prior clients, and that person has relayed confidential information to us. In fact, those are the best and most winnable cases and I would love to use that person's evidence against them, but I cannot. I have to conflict off the case. Why? Because that protects the system. The law that we have in place works; it creates a cleaner system. It reduces the gray area of, Is it transactional, is it derivative, will we have extra litigation on this issue here? So what I would ask the Committee to do in this case is reject this bill.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
I would echo the statements made by Mr. Piro. I think that he raised very salient points regarding some of our concerns with this bill. I would add that I disagree that transactional immunity provides the defendant or the witness in that case with a windfall. I think that it is very important to recognize the benefit that they also provide, and just the concerns with how that information could be used in the future against them. I would just disagree with that statement.

Chairman Yeager:
I have one quick question about some of the opposition. If the current statutory setup was to continue to exist where a motion would be made and a judge would determine what to do, with the addition of the use and derivative use immunity, would any of your concerns be alleviated? Or is it more of a greater picture of bringing in this second kind of immunity that we do not have currently in the state?

John Piro:
I do not know that most of my concerns would be alleviated. I may advise my client against testifying altogether and helping out in any way, shape, or form. That is always a concern that we have from the beginning—if we give you this information that you did not have and would not have without us, why would we do that? Well, there has to be some benefit.

Chairman Yeager:
Do we have any questions from Committee members? [There were none.] Is there any additional testimony in opposition to A.B. 55? [There was none.] Is there any neutral testimony on A.B. 55? [There was none.] I welcome Attorney General Ford back to the table for any concluding remarks.

Aaron Ford:
I am going to tender most of the time to Mr. Kovac for concluding remarks, but I do want to note that it is an uphill battle and I get it and understand. With that said, as I have always been willing to do, I want to work with members of this Committee and the public defenders to see if we can find language that can forge a compromise on this issue. It is a tough one, and I get it, but I think, again, we have an opportunity here to come in line with federal law. You are right, we can set a floor and make laws more protective but I think we have an opportunity for compromise. I am looking forward to doing that between now and when we can get a work session.

Michael Kovac:
One thing that I probably did not articulate as well as I should have is the importance of these statutes. I just want to read a couple of quotes from the United States Supreme Court when they addressed this. First, they characterized immunity statutes as essential to the effective enforcement of various criminal statutes. This is the case from 1972 [*Kastigar*] that said that use and derivative use immunity is sufficient to protect an individual's Fifth Amendment rights to be protected from self-incrimination. It went on to say: "many offenses are of such a character that the only persons capable of giving useful testimony are those implicated in the crime."

In another case in a concurring opinion, Justice White said that immunity statutes have, for more than a century, been resorted to for the investigation of many offenses, chiefly, those whose proof and punishment were otherwise impractical such as political bribery, extortion, gambling, consumer frauds, liquor violations, commercial larceny, and other various forms of racketeering. I can tell you that I have pending cases where this is the situation; where I have a case that is 50-50, I know that if I could compel somebody to testify, that it is going to put it over the top. The problem is I have bigger concerns that the witness I wish to compel to testify is an even bigger fish to fry.

When we talk about the rule of the court here, the court's rule is to bind the prosecution to this deal. It is to make sure that once we grant immunity, we do not go out and use that testimony against that individual. That is the procedural safeguard in place. I have heard concerns expressed by the opposition, but I do not think I have heard a single example of when the prosecution has tried to make an end-around and use that testimony that was compelled against that individual who was compelled to testify.

Chairman Yeager mentioned the possibility of giving the judge the option of transactional immunity or use and derivative use immunity. There is probably wiggle room as far as amendments go. I think the biggest concern from the prosecutors would be not to leave it in the judge's hands in terms of they asked for use and derivative use immunity, but the judge changes it to transactional immunity. That just puts us right back in the same place where it is too big of a gamble to take. If you wanted to have a mechanism for both options to be given to both the prosecutors and the judges as long as we do not give the judge too much discretion to go beyond what the state has requested, that is something we could consider.

Richard Casper:
In response to the system, because that is what this is about, the system is sometimes boring and complex, but it is what guides everything. The 1972 United States Supreme Court case about the federal version of this exact law said, "Among the necessary and most important of the powers of the States as well as the Federal Government to assure the effective functioning of government in an ordered society is the broad power to compel residents to testify in court or before grand juries or agencies . . . . Such testimony constitutes one of the Government's primary sources of information." *Kastigar v. United States*, 406 U.S. 441 (1972).

I understand and I feel the desire not to be forced to testify against my will. Unfortunately, our society and the system that we have does not function and the court systems do not function without that subpoena power, without that power to compel someone to testify.

[(Exhibit J) is a letter to members of the Assembly Committee on Judiciary dated March 13, 2019, in opposition to Assembly Bill 55, authored by Jim Hoffman of the Legislative Committee of the Nevada Attorneys for Criminal Justice. It was not mentioned, but will become part of the record.]

Chairman Yeager:
Thank you, everyone. I will now close the hearing on A.B. 55. I will open the hearing on Assembly Bill 87, which increases the penalty for insurance fraud in certain circumstances. Welcome back to the table, Attorney General Ford and Mr. Kovac.

Assembly Bill 87: Increases the penalty for insurance fraud in certain circumstances. (BDR 57-410)

Aaron D. Ford, Attorney General:
We are here to present Assembly Bill 87. Joining me at the table is Michael Kovac, Chief Deputy Attorney General, and I will tender the floor to him to discuss A.B. 87.

Michael C. Kovac, Chief Deputy Attorney General, Criminal Prosecutions Unit, Office of the Attorney General:
The purpose of A.B. 87 is to deter people from staging automobile accidents for the purpose of committing insurance fraud (Exhibit K). According to the Coalition Against Insurance Fraud, staged accident rings defraud insurance companies out of billions of dollars every year. Rather than get into the specific dollar amounts, I will touch on some of the observations I have made while I have prosecuted some of these cases.

Right now, any act of insurance fraud is a category D felony. It can be something as minor as somebody who unintentionally gets into a fender-bender a week after their policy lapsed, calls the insurance company to renew the policy, and reports that their vehicle had not been in any recent accidents. It is not the crime of the century. But then it gets a lot more serious when people are getting into groups going out on busy roadways and intentionally causing high-speed accidents with innocent victims. Then they obtain unnecessary medical treatment

so that they can file fraudulent insurance claims. The statutes treat both of those defendants exactly the same, whether they are staging these automobile accidents or having a pretty minor lie about when their policy lapsed or when they were in an accident.

To understand why I believe that the penalties should be different it is probably necessary for me to explain how these accident rings operate. Generally, the ringleader recruits a group of individuals to fill the car that is going to get hit. The more people in the car, the higher the potential insurance payout. The participants use one or more cars to stage the accident. Most often, we will see one or both of those stopping for no reason so that they get somebody to ram them from behind. Right away, it is going to be presumed that the person who rammed them from behind is at fault because that is the way the insurance companies have often treated those cases. The accidents are particularly dangerous because the accidents are typically staged on busy streets with higher-than-average speed limits. For those of you in Las Vegas, we see a lot on the 215 Beltway, Interstate 15, and some of the main streets like Nellis Boulevard. The second reason they are particularly dangerous is because they typically target commercial vehicles—big rigs or any kind of larger vehicles. They do that because those vehicles are more likely to be insured and have higher liability limits than average vehicles.

I have personally prosecuted a lot of these cases. In one case, I charged 24 defendants with staging 19 accidents and a handful of thefts. Of those 24 defendants, we were able to bring 17 to court and 7 of them fled. Fourteen took felonies, two took gross misdemeanors, and one took a misdemeanor. The investigation went on for quite a while, but if I had more time and resources, I am guessing that case would have been at least doubled. We had enough information that showed several other people were involved in additional accidents. The statute of limitations was coming up, and our time and resources were limited, so that was all we could do.

As a result of one of those accidents, an elderly couple was taken from the scene in an ambulance to the hospital, and in another accident, the participant targeted a vehicle with an 11-year-old girl in the front passenger seat. During a preliminary hearing in a completely separate prosecution, a supervisor from an insurance company testified that his company was getting out of the business of insuring trucks in the western United States altogether because these staged accidents are so prevalent out here. While we have not seen it yet in Nevada to our knowledge, there are documented cases of staged accidents resulting in deaths.

Getting back to the larger staged accident case that I was talking about, one of the defendants was the driver in at least 17 of the 19 accidents. I am sure that he was the driver in many more based on some of the evidence we had. He was the driver in the one that sent the elderly couple to the hospital as well as the 11-year-old girl in the front passenger seat. He pled guilty to two felonies and one gross misdemeanor, and the total sentence he was given was 2 to 10 years. Given the nature of the crimes, it is pretty obvious that the current statutory penalties are not commensurate with the gravity of the crime. But those are the kinds of sentences we are going to continue to see if the law treats staged accidents the same

way that it treats somebody who lies about when they were in an unintentional accident when their policy lapsed.

We are asking the Legislature to increase the penalties as follows:

- Staged accident insurance fraud would be punishable as a category C felony if there is no substantial bodily harm caused, and as a category B felony where the accident does cause substantial bodily harm.

- All other acts of insurance fraud would continue to be punishable as category D felonies.

Given the risk to public safety, the cost to consumers, businesses, and the state to prosecute these complicated cases with the insurance fraud rings, these increased punishments would be more in line with the gravity of the seriousness of the crimes.

Assemblywoman Backus:
I am an attorney who does some insurance defense work and I do some examinations under oath. I was quite surprised how stiff the penalty already was with the category D felony in the example that you gave. I commonly see that where someone will just misrepresent a claim, and a category D is still a felony and seems disproportionate. When I am looking at the amendment (Exhibit L) in section 1, subsection 3, where there is substantial bodily injury, it is almost the people, in the case you discussed, who are injuring themselves. You used the example of the elderly couple and the 11-year-old child, but it does not look like the statute distinguishes that.

Michael Kovac:
You are correct. That is not something I considered when it was drafted. To me, if anybody is going to get seriously injured whether it is the defendants themselves or innocent victims, it is a serious enough crime that it should be punished with a category B felony. That would be my position.

Assemblywoman Backus:
Right now we are trying to do some criminal justice reform and when I see this category B felony, it just seems so disproportionate to other crimes in our statutes. I am just startled by how stiff we are trying to go on these. This almost seems like a slippery slope. I went to *Nevada Revised Statutes* (NRS) 686A.2815 for the definition of insurance fraud and under paragraph (h), it would even extend to people "participating in" the crime. I just got nervous that a lawyer who unwittingly starts representing these individuals could be charged with a felony. It is obvious in the multicar accidents, because you start to see them filed over and over with the same folks. But then the innocent lawyer representing them in one case, because they do not hire the same counsel in each and every case, could get that felony as well. These are just comments to think about because it is concerning how grave these category felonies are going up for these types of crimes.

Michael Kovac:
I think we can address those concerns. As far as the category B felony, I understand with the reform that is going on and I think we can be flexible on our end. I think it is important to differentiate the cases with and without substantial bodily harm. Maybe a possibility is to have a general category C felony for no substantial bodily harm and maybe a category C felony with a higher level of sentencing range where there is substantial bodily harm. I think there is definitely some wiggle room there.

As far as an innocent attorney getting caught up in that, we have had cases where we have certainly suspected that the attorney might know but we do not have proof of that. In those instances, we cannot prosecute that. As in any other case, if there is an innocent bystander or a participant who does not know that he is participating in a crime, we certainly are not going to prosecute that person. We have not done it in the past and this bill will not change anything about that. I would not say that every single attorney involved in these is innocent. There is a case from Los Angeles, California, where an attorney was convicted of manslaughter, I believe, because somebody was killed in one of these staged accidents. If we get information that an attorney is knowingly participating in this, we would certainly prosecute him for it. If it is an attorney where we have no information aside from he just happens to represent these people, that is not enough to prosecute. Nothing in this bill would change that.

Assemblywoman Cohen:
I do not practice in criminal law, but I thought with these cases we are already able to charge multiple crimes against defendants who are part of these insurance rings. Is that correct? I thought there was conspiracy, racketeering, et cetera.

Michael Kovac:
It is possible to charge those types of crimes. If it is not a huge case, we like to avoid the racketeering charge because it just complicates things. Regardless, the main offense is actually staging the accident for insurance fraud. We would like the penalties for that to be commensurate with the gravity of the offense. Conspiracy can be charged, but conspiracy is only a gross misdemeanor so that is not going to give us any teeth at all compared to the penalties that we are proposing and even the existing penalties.

Assemblywoman Cohen:
Well, those are two that I listed. Can you give us the other ones that can be charged and are often charged? With a car, you are talking about battery with a deadly weapon—are there several that can be charged?

Michael Kovac:
Arguably, yes. Theft, I believe, can be charged with insurance fraud. The battery with a deadly weapon—in my opinion it is, but it is probably not going to be clear-cut to a jury or maybe not even a judge. What we are trying to do is avoid having to charge battery with a deadly weapon because I have serious concerns that a jury is going to look at the definition of that crime and consider these staged accidents to satisfy those elements.

Assemblywoman Cohen:
Can you give us a list of the other crimes that are also being charged? My understanding is that there are several.

Michael Kovac:
For the large, staged accident that I talked about, we had racketeering charges because that was an appropriate case to charge it. We also had racketeering conspiracy, theft, insurance fraud, and battery with a deadly weapon. We did not have anybody plead to the battery with a deadly weapon charge due to a lot of objections by the defense attorneys.

Assemblywoman Cohen:
Are there others that are used in any of the cases?

Michael Kovac:
The only other one I can think of would be multiple transactions involving fraud. Usually it would be that or the racketeering charge, but those are all the ones I know off the top of my head.

Assemblywoman Cohen:
We hear from our constituents often about trouble they are having with insurance companies. What is the Office of the Attorney General doing to ensure that Nevada's citizens are having legitimate claims be honored by insurance companies in Nevada? Are we ever doing criminal charges when that is not happening?

Michael Kovac:
I have never had a referral from any constituent for criminal charges. I believe that Robert Giunta, who is the head of our Fraud Control Unit for Insurance, is available in Las Vegas to testify as well so he might know about that. What crime would you be concerned about in terms of an insurance company denying a claim?

Assemblywoman Cohen:
When legitimate claims are not being honored by insurance companies.

Michael Kovac:
I know in the civil arena there are damages awarded for that, but not in the criminal realm that I am aware of. I would be happy to consider it if we can figure out a crime for it, but there is none that I am aware of.

Aaron Ford:
In the civil context, there may be a different answer. If you have constituents with those types of concerns, they can reach out to our constituent services unit and we can look at it from a civil matter.

Chairman Yeager:
Do we have any other questions from Committee members? [There were none.] I will open it up to testimony in support of A.B. 87 either in Carson City or Las Vegas.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are in support of the bill.

C. Joseph Guild III, representing State Farm Insurance Companies:
We are in support of the bill and the amendments, and we thank Attorney General Ford for bringing this bill forward.

Lisa Foster, representing Allstate Corporation; and American Family Insurance Company:
We are in support of A.B. 87. The cost of insurance fraud is borne by all of us in terms of higher insurance rates. By strengthening this law, all policyholders stand to benefit. We urge your support of this bill.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
We are in support of A.B. 87 including the amendment (Exhibit L) sponsored by the Attorney General's Office. I did want to address Assemblywoman Backus' question in terms of the category B felony. It would be our position that this is consistent with other provisions of law dealing with road incidents and substantial bodily harm being a category B felony, including recklessly causing substantial bodily harm. Driving under the influence is also a category B felony, although the penalties are much more significant within the category B range.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We are in support of A.B. 87.

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office:
It is funny that 20 years ago today I was a student intern with the Attorney General's Office under Frankie Sue Del Papa working for Deputy Attorney General Ronda Clifton under the Insurance Fraud Unit, so we, too, appreciate these provisions in holding people accountable for their actions.

Jeanette K. Belz, representing American Property Casualty Insurance Association; and Liberty Mutual Insurance:
To add to what Ms. Foster said, in addition to the millions of dollars that fraud does incur and is passed on to insureds, we also have the innocent victims of these types of crimes. We are in support of the original bill as well as the amendment (Exhibit L). I also wanted to add that we have been talking to the Attorney General's Office about possibly using this vehicle or another one to increase the fraud assessment that insurers pay. I was saddened to hear that

Mr. Kovac said that he did not have enough resources and potentially there was more that he could do in the particular case he described to you. The fraud assessment under NRS 679B.700 has not been increased since 2001. It is borne by insurers and we would like to see that raised.

Chairman Yeager:
Do we have any questions from Committee members? [There were none.] Do we have any additional testimony in support of A.B. 87?

Robert Giunta, Senior Deputy Attorney General and Director, Fraud Control Unit for Insurance, Office of the Attorney General:
We are charged with prosecution of insurance fraud. I started in the Attorney General's Office in 2008, and at that time the average run-of-the-mill insurance fraud case was an individual who was overextended on his car loan and he sends it over the cliff; or you had a teenager who takes his dad's car to a party, damages the car, and then tells dad the car is stolen. Those were the typical defendants that we got, and the motive was to get rid of an unwanted debt but very rarely did it involve other Nevada drivers. Now we are encountering a new type, new breed of defendant, one who is seeking actively to obtain money by virtue of intentional crashes. Those involve innocent Nevada drivers.

I do not want to go through the same things that Mr. Kovac has already explained to you, but let me tell you that our office receives 120 insurance fraud claims every month. Of those, we probably receive ten per month that involve staged accidents. Our office received eight referrals for staged accidents in the last six months. We received our last staged accident in December and that involved a United Parcel Service 18-wheeler which was on Interstate 15 south. I cannot think of a more dangerous scenario than something like that. So far we have been very lucky that there have been no serious accidents in Nevada, but we are tempting fate.

Until we indicate to people who are doing this that this is a serious crime and that they are going to be punished seriously, this is going to continue. If you talk to insurance companies or other law enforcement, staged accident rings tend to linger until there is some kind of movement by law enforcement. Texas, California, and New Mexico have all experienced this. I guess what I would ask is that you consider this not only for the financial aspect but also for the danger to Nevada citizens who use our roads. I think if you view it from this perspective, I think it is clear that an increase in the penalty for insurance fraud categories for those who stage accidents is clearly warranted.

Chairman Yeager:
Ma'am, are you in support or opposition?

April Tatro-Medlin, Private Citizen, Las Vegas, Nevada:
After listening to the gentleman next to me, I am in support of it. I did not realize it was such a big problem and I certainly do not want to be an individual who is caught up in this type of

crime. I have daughters who are not that great of drivers, and I do not want them to be involved in these kinds of accidents either. So I support it.

Chairman Yeager:
Do we have any other support testimony of A.B. 87? [There was none.] I will now open it up to testimony in opposition to A.B. 87.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I do want to thank Attorney General Ford's office for all of the meetings they had with us to talk about these things. In discussing it, I do share some of the concerns that Assemblywoman Backus brought up about the initial penalty for insurance fraud. We are talking about a billion dollar industry that uses the state's resources to go after people when, frankly, they have the resources to go after themselves.

In talking about deterrence, nobody wants anybody to get hurt by a bad actor doing something in this framework. We have talked about deterrence in here frequently and I will just talk about the United States Department of Justice's findings on deterrence—that certainty has a greater impact on deterrence than the severity of punishment. The Attorney General comes with this bill deciding to raise it to 1 to 20 years, and maybe it would be a deterrent if we actually had these meetings piped into the Department of Corrections, which I am all for, because then we could say that people are actually aware of what is happening at the Legislature. As far as that goes, simply raising penalties is not going to deter crime and there is not very much research that would state that. Nor has the Attorney General come with facts and figures that would show raising penalties would reduce it, or even this state raised the penalty and it reduced. But no, it is just let us increase this and give us more range to punish people.

There is the felony reckless that this could be wrapped into. That perhaps might be a good solution here, and it would increase the penalty to match that of a felony reckless where bodily injury occurs. I am, however, all for, as Ms. Belz stated, getting more resources for the Attorney General's Office to prosecute these crimes. The certainty of being caught has a greater impact on deterrence than the severity of the punishment. If they had more resources and more lawyers to prosecute these and even more police officers to investigate these issues, perhaps that would deter more of this as more people are getting caught and we are taking more bad actors out of the loop. But as far as just simply increasing the penalty, we do not agree that that would deter anyone.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
I want to echo the statements made by Mr. Piro. We definitely appreciate Attorney General Ford's team meeting with us on several occasions to speak about these bills, and we do appreciate the amendment (Exhibit L) they made based on hearing our concerns. I would just add that specifically with section 1, subsection 3, what we have heard is that there are several different mechanisms where a state can go after that bad actor. My concern would be

to keep stacking on and allowing for different charges to occur that are category B felonies where we have no way of being able to be assured that an individual would just be convicted of one and, for the same act, could end up being convicted of several, since there are different elements. They do not all wrap and would not all merge into being just one conviction.

Chairman Yeager:
Do we have any questions from Committee members? [There were none.] Do we have any other testimony in opposition to A.B. 87? [There was none.] Do we have any neutral testimony to A.B. 87? [There was none.] I welcome Attorney General Ford back up for any concluding remarks.

Aaron Ford:
We are willing to work with those in opposition to figure out if there is a way to move forward. Those of us who are lawyers, went to law school, and took criminal law, we learned that the penal system has many purposes. It is not just deterrence, so the notion that we should only put in statutes deterrences is inappropriate and improper. We also have to punish people for wrongdoings, and the punishment for a staged accident is the same as the punishment for lying about an accident after your insurance lapsed. That is what we are trying to address here. Let us keep our eyes on the prize on this issue and what we are talking about specifically is staged car accidents. When I sat on the other side with all of you and we would question people down here, especially on the criminal justice context, we would be concerned when a prosecutor would use stacking in terms of charges. We want to address a specific issue. We do not want to have to use a charge that might encompass what this person has done; we want to use a specific charge, a specific penalty, and a specific punishment for a staged car accident and that is what this bill is about. I am happy to work with anyone to try to facilitate a resolution of this as well.

[(Exhibit M), (Exhibit N), (Exhibit O), (Exhibit P), and (Exhibit Q) were submitted but not discussed and will become part of the record.]

Chairman Yeager:
Thank you, Attorney General Ford, for being here and presenting all four of the bills today. I will close the hearing on A.B. 87. I will now open it up for public comment either in Carson City or Las Vegas. [There was none.]

Do we have any comments or questions from Committee members? [There were none.] We will start tomorrow at 9 a.m. with our work session. Members, look for that work session document later this afternoon to be ready for review. If anyone has any concerns about the bills, please contact me. After the work session, we will have one bill that I will be presenting. Monday, we will start at 9 a.m. with Assemblywoman Krasner's bill.

The meeting is adjourned [at 10:30 a.m.].

RESPECTFULLY SUBMITTED:

_____
Traci Dory
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is written testimony in support of Assembly Bill 15, submitted and presented by Michael C. Kovac, Chief Deputy Attorney General, Criminal Prosecutions Unit, Office of the Attorney General.

Exhibit D is a statement of intent and proposed amendment to Assembly Bill 15, submitted by Michael C. Kovac, Chief Deputy Attorney General, Criminal Prosecutions Unit, Office of the Attorney General; and Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General.

Exhibit E is a letter to members of the Assembly Committee on Judiciary dated March 13, 2019, in opposition to Assembly Bill 15, authored by Jim Hoffman of the Legislative Committee of the Nevada Attorneys for Criminal Justice.

Exhibit F is written testimony in support of Assembly Bill 16, submitted and presented by Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General.

Exhibit G is a statement of intent and proposed amendment to Assembly Bill 16, submitted by Jimmy Humm, Deputy Chief of Staff, Office of the Attorney General; and Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General.

Exhibit H is written testimony in support of Assembly Bill 55, submitted and presented by Michael C. Kovac, Chief Deputy Attorney General, Criminal Prosecutions Unit, Office of the Attorney General.

Exhibit I is a statement of intent and proposed amendment to Assembly Bill 55, submitted by Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General; and Jimmy Humm, Deputy Chief of Staff, Office of the Attorney General.

Exhibit J is a letter to members of the Assembly Committee on Judiciary dated March 13, 2019, in opposition to Assembly Bill 55, authored by Jim Hoffman of the Legislative Committee of the Nevada Attorneys for Criminal Justice.

Exhibit K is written testimony in support of Assembly Bill 87, submitted and presented by Michael C. Kovac, Chief Deputy Attorney General, Criminal Prosecutions Unit, Office of the Attorney General.

Exhibit L is a statement of intent and proposed amendment to Assembly Bill 87, submitted by Michael C. Kovac, Chief Deputy Attorney General, Criminal Prosecutions Unit, Office of the Attorney General; Robert Giunta, Senior Deputy Attorney General and Director, Insurance Fraud Control Unit, Office of the Attorney General; and Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General.

Exhibit M is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary, dated March 5, 2019, in support of Assembly Bill 87, authored by Howard Handler, Government Affairs Director, National Insurance Crime Bureau.

Exhibit N is a letter to members of the Assembly Committee on Judiciary, dated March 8, 2019, in support of Assembly Bill 87, authored by Matthew J. Smith, Director of Government Affairs and General Counsel, Coalition Against Insurance Fraud.

Exhibit O is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary, dated March 12, 2019, in support of Assembly Bill 87, authored by Christian John Rataj, Senior Regional Vice President, State Government Affairs, Western Region, National Association of Mutual Insurance Companies; and Melissa Crawford, President, Nevada Insurance Council.

Exhibit P is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary, dated March 14, 2019, in support of Assembly Bill 87, authored by Mark Sektnan, Vice President, American Property Casualty Insurance Association.

Exhibit Q is a letter to members of the Assembly Committee on Judiciary, dated March 13, 2019, in opposition to Assembly Bill 87, authored by Jim Hoffman, Legislative Committee of the Nevada Attorneys for Criminal Justice.