MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eightieth Session
May 7, 2019

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:18 a.m. on Tuesday, May 7, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Nicole J. Cannizzaro, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Assemblyman Edgar Flores, Assembly District No. 28
Assemblyman Tom Roberts, Assembly District No. 13

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Jenny Harbor, Committee Secretary

OTHERS PRESENT:

Aaron D. Ford, Attorney General
Jessica Adair, Chief of Staff, Office of the Attorney General
Liz Ortenburger, SafeNest
Chuck Callaway, Las Vegas Metropolitan Police Department

Eric Spratley, Nevada Sheriffs' and Chiefs' Association
Lisa Rasmussen, Nevada Attorneys for Criminal Justice
Holly Welborn, American Civil Liberties Union of Nevada
Corey Solferino, Washoe County Sheriff's Office
John T. Jones, Jr., Nevada District Attorneys Association
Michael Cathcart, City of Henderson
Sarah Adler, Nevada Coalition to End Domestic and Sexual Violence
Brian O'Callaghan, Las Vegas Metropolitan Police Department
Michael Gomez, Las Vegas Metropolitan Police Department
Dave Dazlich, Las Vegas Metro Chamber of Commerce
Bryan Wachter, Retail Association of Nevada
Dylan Shaver, City of Reno
Kristina Wildeveld, Nevada Attorneys for Criminal Justice
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Keyla Terrones
Erika Castro, Progressive Leadership Alliance of Nevada; Nevada Immigrant Coalition
Mayra Salinas-Menjivar, UNLV Immigration Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas
Bryan Martin, Legal Aid Center of Southern Nevada
Julie Bobzien, Volunteer Attorneys for Rural Nevada
Jose Rivera, Nevada Hispanic Legislative Caucus
Alex Ortiz, Clark County
Catherine Jorgenson, Deputy District Attorney, Civil Division, Office of the District Attorney, Clark County

CHAIR CANNIZZARO:
I will open the hearing on Assembly Bill (A.B.) 60.

ASSEMBLY BILL 60 (2nd Reprint): Revises provisions related to criminal justice. (BDR 3-425)

AARON D. FORD (Attorney General):
I am here with staff to present A.B. 60.

JESSICA ADAIR (Chief of Staff, Office of the Attorney General):
Every 17 minutes and 20 seconds, an act of domestic violence is reported to law enforcement in this State alone. In Nevada, over 30,000 domestic violence

offenses were reported in 2017. This rate has increased every year for the past five years. Nevada has one of the highest rates of domestic violence in the Nation and consistently leads the Nation for domestic violence fatalities. Domestic violence in this State is a public safety and health epidemic that is only getting worse.

Assembly Bill 60 strengthens Nevada's domestic violence laws to more appropriately treat violent crimes that take a severe physical, mental, emotional and economic toll on victims and may have a lasting effect on the ability of victims to live normal lives long after physical abuse ends.

For the record, I am going to go through the bill as provided in Amendment No. 643. There are a few sections that make conforming changes based on other changes in the bill. In the interest of time, I will only discuss the sections that make substantive changes to the law.

Section 1, subsection 1 adds crimes that may constitute domestic violence if committed against a victim in a domestic violence relationship as defined in *Nevada Revised Statutes* (NRS). This bill adds burglary and pandering to statute, and clarifies home invasion and coercion. These are the crimes law enforcement and advocates see as being committed against victims of domestic violence. By adding them to NRS 33.018, offenders convicted of these crimes in a domestic violence situation would have to comply with additional requirements such as mandatory counseling and surrendering firearm rights.

Section 1, subsection 2 provides that siblings and cousins who are not in a guardianship or custodial relationship with each other do not fall within the scope of the domestic violence statutes. It seems counterintuitive to take people out of the domestic violence definition, but domestic violence is the abuse that is part of a systematic pattern of power or control from one intimate partner over another. The purpose of statutorily treating domestic violence differently than other violent crimes is to identify the special relationship of family or intimacy that makes the victim particularly vulnerable. Adult siblings and cousins, while related, most often do not have this kind of intimate relationship.

Similarly, section 1.5 provides that siblings and cousins who are not in a guardianship or custodial relationship with each other are not included in the mandatory arrest provisions of NRS 171.137. This section additionally provides

law enforcement the discretion not to arrest siblings and cousins who are not in a guardianship or custodial relationship for acts amounting to battery.

Section 1.5, subsection 4 releases a police officer and his or her employing agency from civil and criminal liability for not arresting a person pursuant to this subsection.

The version of this amendment that passed through the Assembly Committee removed present and former roommates from the mandatory arrest provision. For some reason, this was not included in the version produced by the LCB. We encourage this Committee to add that provision back in, as roommates who are not in an intimate relationship do not fall under this same systematic pattern of abuse or control from one intimate partner over another. Based on feedback from stakeholders in this space, often when things get out of hand between roommates or adult siblings and cousins during events like family reunions, those violent situations or battery situations should be treated just like every other battery in the State rather than a domestic violence battery.

Sections 2 and 3 amend statutes pertaining to videotape depositions to include victims under NRS 201.301, the facilitating sex trafficking statute.

Section 3.5 authorizes a $35 assessment against persons convicted of domestic violence crimes. This assessment will be used to fund programs in the Office of Ombudsman for Victims of Domestic Violence. It also clarifies that domestic violence offenders shall attend treatment for persons who commit domestic violence as outlined in the mandatory counseling provision. This includes convictions by municipal court judges and justices of the peace.

Section 8.5 amends NRS 199.480 to include facilitating sex trafficking.

Sections 14 and 14.5 amend assault and battery statutes to provide that a prosecuting attorney is an officer of the State.

Section 15 increases penalties for domestic battery. The punishment for a first offense of domestic battery is a term of imprisonment from two days to six months that may be served intermittently. This bill does not increase the punishment but requires that intermittent terms must be served by a period of at least 12 hours rather than 4 hours of confinement.

The second domestic battery conviction within 7 years of the first conviction is punishable by a minimum of 20 days imprisonment; that is an increase from 10 days. This section also allows the term of imprisonment to be served intermittently.

The penalty for a third domestic battery conviction within 7 years increases to a Category B felony and is punishable by a term of incarceration from 1 to 6 years and a fine of $1,000 to $5,000.

Section 15 also provides increased penalties in subsection 4 for domestic battery committed against a pregnant victim when the offender knew the victim was pregnant. One of the leading causes of death of pregnant women is homicide. Research shows pregnant women who are battered are more likely to experience violent trauma and are twice as likely to die after trauma as a nonpregnant woman. A first offense of domestic battery committed against a pregnant victim is a gross misdemeanor. A subsequent offense is a Category B felony, punishable by a term of incarceration from 1 to 6 years and a fine of $1,000 to $5,000.

Section 15, subsection 5 states a domestic battery resulting in substantial bodily harm to the victim is punishable as a Category B felony with a term of incarceration of 1 to 6 years and a fine of $1,000 to $5,000. This penalty is meant to reflect the severity of the violent nature of the crime.

Section 17 codifies language from the model stalking codes and updates Nevada's definition of stalking. Statute is unclear in that it appears a person only commits the crime of stalking if he or she has made the victim's family feel terrorized, frightened, intimidated, harassed or fearful for their safety rather than addressing the victim's own safety. This definition is clarified in that way.

Additionally, the definition clarifies the victim must be in fear of his or her immediate safety rather than some indiscriminate time in the future. It also clarifies the trier of fact should determine whether the course of conduct would cause a reasonable person to fear for his or her safety under circumstances similar to the victim's.

This section also increases penalties for subsequent convictions of stalking. A second offense is a gross misdemeanor, and a third stalking conviction is

punishable as a Category C felony with 1 to 5 years of incarceration and a fine not to exceed $5,000.

Section 17, subsection 2 increases penalties if the victim is under the age of 16 and the offender is at least 5 years older than the victim. This language was incorporated to assure younger offenders were not punished more harshly because of conduct committed against their peers but rather to punish those offenders who seek to prey on children.

A first offense is a gross misdemeanor; a second offense is a Category C felony punishable by a term of imprisonment of 2 to 5 years and a fine not to exceed $5,000. A third offense is a Category B felony punishable by a term of imprisonment of 2 to 15 years and a fine not to exceed $5,000.

Section 17, subsection 5 provides Nevada the jurisdiction to prosecute this crime if the act was committed within the State or if the victim was located within the State. This pertains mostly to cyberstalking or stalking committed by means of electronic or telephone communication.

Section 17, subsection 11, paragraph (a) clarifies the definition "course of conduct" to mean a pattern of two or more acts over a period of time.

Section 21 clarifies the punishment for conspiracy crimes related to sex trafficking involving a child.

Section 22, subsection 1, paragraph (b) is proposed to be deleted in Amendment No. 643. Any conviction of misdemeanor or felony domestic violence in Nevada or any other state results in the loss of an offender's right to own or possess a firearm. This has been federal law for decades and will not change whether this Committee restores this language.

Section 38 amends NRS to clarify that sex trafficking includes a violation of NRS 201.301, the facilitating sex trafficking statute.

Section 41 establishes a subcommittee of members of the Committee on Domestic Violence to review programs for treatment of persons who commit domestic violence. This allows the subcommittee to meet more frequently than the larger Committee to conduct reviews of programs.

Section 42 clarifies the authority of the Office of Advocate for Missing or Exploited Children to investigate and prosecute crimes of facilitating sex trafficking involving child victims.

Section 43.5 clarifies which prosecutors may request the DMV to display an alternate address on their driver's licenses.

SENATOR PICKARD:
I work a fair amount in this space; A.B. 60 is a good move. I have a question regarding the removal of language involving domestic relationships that are not intimate. We passed a bill last Session that allows tenants to get out of leases if they are victims of domestic violence. Those are typically roommate—not just spousal—situations. By removing them from statute, we are taking away an important tool. This is not just within a lease context, but domestic violence gives immediate protections a simple battery charge may not. Why do we need to take these individuals out of these protections?

MS. ADAIR:
A person living with someone whom they have an intimate relationship remains in the domestic violence definition. If that person has had a dating relationship, is in a dating relationship or has a child with that person, he or she would remain in that definition. We are just seeking to remove from the mandatory arrest provisions a person in a strictly platonic roommate relationship with his or her roommate.

There has been an evolution in society's acceptance of people who have preferred to not reveal to law enforcement they are in dating relationships with other persons for reasons private to them. A lot of that stigma has been removed in recent years, unfortunately, some remains.

Law enforcement has done a good job identifying domestic violence relationships even when someone says, "We are just roommates." That said, law enforcement still has the discretion to arrest someone in a battery situation if he or she is just a roommate. We want to remove mandatory arrest if someone is only a roommate and officers do not feel it necessary for someone to go to jail immediately; this battery can be treated like every other battery.

The definition of the mandatory arrest provision reads "with a person with whom he or she is or was actually residing." People do not have to be current

roommates for that mandatory arrest provision to occur. It is important to get at the root of that systematic pattern of behavior or control when dealing with domestic violence. When we arrest those who are not in an intimate relationship, we raise the rates of State domestic violence and may not accurately reflect what is happening.

SENATOR PICKARD:
We have protections in place for a reason. When we remove those protections, the record needs to be clear why.

LIZ ORTENBURGER (SafeNest):
We see over 25,000 victims annually in Clark County. We support the changes in A.B. 60 regarding the definition of domestic violence to include coercion, burglary, home invasion and pandering. We see this often as the precursor of emergency temporary protection orders for Clark County. If there is a domestic violence relationship and the charge is burglary, the offender is booked under burglary and we cannot provide an emergency temporary protection order for the victim. This change is important for the protection of victims.

In addition, we support the removal of siblings and cousin relationships for the reasons Ms. Adair reported. The power and control dynamic does not exist, so services for domestic violence are not helpful to folks who are experiencing family difficulties in a different arena.

We are neutral on all penalty increases of A.B. 60.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
We support A.B. 60. Some language from a proposed amendment from the Nevada Attorneys for Criminal Justice is missing from the redraft of the bill. Specifically, it is language involving public safety and law enforcement that reads, "whether or not a warrant has been issued, a peace officer may arrest a person when the peace officer has probable cause to believe that the person to be arrested has, within the preceding 24 hours, committed a battery." Last Session, we worked with folks on the roommate issue. Roommates who are not in a dating relationship do not want to be charged under the domestic violence statute due to its severe penalties. However, an officer in the field needs to be able to deescalate those situations. If we do not have the ability to arrest for a misdemeanor that did not occur in our presence, we will respond to multiple

calls for service where roommates are in a fight, the officer asks one of them to leave and both refuse; we continue to be called back until violence occurs.

The day I testified on the bill last Session, we had one roommate murder the other roommate. Even though we believe these crimes should not constitute domestic violence, we want to give an officer in the field the ability to make an arrest and deescalate if appropriate.

CHAIR CANNIZZARO:
That bill from last Session was my bill, and I remember the conversation about that language. It is my understanding the inclusion of that language will solve this issue.

MR. CALLAWAY:
That is correct.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):
We support A.B. 60. We agree with what Mr. Callaway said; I have had circumstances where roommates fight over peanut butter. This is a fine line to walk, and we want to make sure it results in good public policy. This bill addresses the proposed amendment Mr. Callaway referenced.

I can meet with you offline to talk about siblings as those kinds of scenarios—a couple of guys wrestling on the floor over burying their father—and relationships should come out. This bill addresses that as well.

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):
We worked extensively with the Attorney General's Office on this bill. We support A.B. 60.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
We support A.B. 60. We work on about 19 different projects with our national organization, and witnessed a lot of laws pertaining to domestic violence and sexual assault have been devalued and systematically underenforced as applied to minority communities and women. We strive to put ourselves in a place of support for bills such as these, particularly in Nevada where there are high rates of domestic violence.

We agree with Ms. Adair and want that amendment with a carveout for roommates in mandatory arrest provisions.

COREY SOLFERINO (Washoe County Sheriff's Office):
We support A.B. 60. This policy has nationwide best practices in place.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
We support A.B. 60. We are also in favor of the proposed amendment regarding roommates.

MICHAEL CATHCART (City of Henderson):
We support A.B. 60. We concur with the comments from the Las Vegas Metropolitan Police Department and the Nevada Sheriffs' and Chiefs' Association.

SARAH ADLER (Nevada Coalition to End Domestic and Sexual Violence):
We support A.B. 60. Ms. Ortenburger provided more detailed testimony on the key items of definition with which we concur. In particular, we want to call out the provision in section 41 to create the subcommittee to more frequently meet to look at treatment programs.

This is a problem of a systematic pattern of abuse and control. It is a difficult nut to crack and we are eager for solutions on the cause side, but we appreciate the response side addressed in this bill.

MS. ADAIR:
I am happy to give the Committee a copy of the amendment that we agreed upon regarding discretionary arrest provisions for roommates. I did not realize it was not included in Amendment No. 643 until recently. We are happy to work on that and any other issues you may have with the bill.

CHAIR CANNIZZARO:
I will close the hearing on A.B. 60. I will open the hearing on A.B. 272.

ASSEMBLY BILL 272 (1st Reprint): Requires law enforcement agencies in certain counties to participate in the National Integrated Ballistic Information Network. (BDR 15-603)

ASSEMBLYMAN TOM ROBERTS (Assembly District No. 13):
Assembly Bill 272 requires law enforcement agencies in certain counties to participate in the National Integrated Ballistic Information Network (NIBIN).

When any semiautomatic pistol discharges a bullet, it leaves a distinct signature on the shell casing. It is unique to that gun; it is like a fingerprint. It only works for semiautomatic pistols because of the extractor; it does not work for revolvers or rifles or the like. Shell casings from a crime scene and casings fired from recovered handguns are entered into the NIBIN system in an attempt to find a match.

The National Integrated Ballistic Information Network is a nationwide database. Several states participate. We have two NIBIN machines in Nevada: one at the Las Vegas Metropolitan Police Department (LVMPD) and one at the crime lab at the Washoe County Sheriff's Office.

Say a shell casing from a crime scene is entered in Los Angeles, and a handgun is recovered in Clark County. We enter the shell casing that was fired from that handgun into NIBIN and there is a match. It is a preliminary match; it is not evidentiary quality. A forensic examiner would still need to examine the firearm and the shell casing to confirm a match for court purposes.

I was an Assistant Sheriff at the LVMPD when I became the Assistant Sheriff over Law Enforcement Investigations and Support Group. Our NIBIN system was severely underutilized, so I visited some states that were doing a good job and revamped our Clark County system. We doubled our forensics analyst, and we doubled our ability to enter firearms and shell casings. Our matches and hits have quadrupled, and we are solving a lot more crimes than before.

Any law enforcement agency in Nevada can participate in NIBIN. Most do, but not all do, and they are not at a high degree.

I will give you an example of a success story. A man walked up to a homeless man who was sleeping downtown on Las Vegas Boulevard and murdered him—the homeless man was shot several times. We had no leads in that investigation; we just knew the suspect was a male dressed in dark clothing. We canvassed the area through computer-aided dispatch for other illegal shootings in the area. There were none in our jurisdiction, but North Las Vegas did have one the night before the murder. Its officers were dispatched and did

not find anything, so we went back out with North Las Vegas and recanvassed the area. We found some shell casings less than one-half mile from our crime scene. We entered those casings into NIBIN along with the shell casings from the murder scene and were able to match those two together. We conducted a complete canvass in that apartment complex and found a witness who said, "Yeah, there's a guy that comes out and shoots his gun all the time; he lives in that apartment up there." We were able to identify that person, perform surveillance, issue search warrants, identify the murderer, recover the murder weapon and solve that crime. Had we not put those two shell casings from those crime scenes together through NIBIN, we would never have made that match.

There are probably crime guns linked to other crimes on the shelves in evidence vaults, and we are not solving those crimes. Assembly Bill 272 attempts to increase the usage of NIBIN in our two largest counties; it also tries to bring more resources into the State. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will apply more resources to states that are serious about fighting gun crime.

Section 1, subsection 1, paragraph (a) states "The board of county commissioners of the county shall designate a forensic laboratory or laboratories to conduct tests and perform the other duties set forth in this section." This bill only applies to counties with a population of 100,000 or more, which are only Clark and Washoe Counties.

Section 1, subsection 1, paragraph (b) requires that:

> any law enforcement agency in the county that seizes or recovers a semiautomatic pistol or shell casing from a semiautomatic pistol which was unlawfully possessed, used for an unlawful purpose, recovered from a crime scene or reasonably believed to have been used in or associated with the commission of a crime shall ... deliver the semiautomatic pistol or shell casing to a designated forensic laboratory for the purpose of testing.

It also requires the designated forensic lab to conduct tests on the pistol and shell casings and input those results into NIBIN.

Section 1 also requires the designated laboratory to coordinate with all other participating law enforcement agencies that use the NIBIN system and, when feasible, to provide expert witness testimony during criminal cases. As I mentioned earlier, NIBIN is a preliminary test; the forensic lab would have to do any kind of court work.

MR. CALLAWAY:
We embrace new technology, and we are using a number of new technologies such as ShotSpotter facial recognition; NIBIN is one piece of the overall puzzle when solving crimes. We found criminals typically get their guns in auto burglaries, and they pass them around. One criminal may commit a crime with a gun then hand it off to someone else who commits a different crime. This helps us connect the dots and solve crimes.

We have had over 4,000 hits through NIBIN. It can help us significantly reduce violent crime. It has also changed the way we respond to certain types of calls. For example, people used to call in when they heard gun shots. An officer would drive through a neighborhood without seeing anything and move on to the next call. Now, even if we do not have a victim, we can potentially link any recovered shell casings to another crime where someone was shot. These situations escalate; someone shooting in the air today will shoot a person tomorrow. It is good for us to be able to connect those dots.

The Las Vegas Metropolitan Police Department supports A.B. 272.

ASSEMBLYMAN ROBERTS:
Assembly Bill 272 is meant to reduce gun violence in our two most populated counties, although other counties within the State can participate. This bill is also meant to solve crimes, identify suspects involved in gun crimes and demonstrate to federal authorities that Nevada is serious about investigating gun crimes and adding resources to our State.

National Integrated Ballistic Information Network entry is mandatory in New Jersey and Delaware. Since that time, those states have achieved the three objectives I just mentioned.

SENATOR HANSEN:
Why do we need a law for this? It seems law enforcement should automatically be doing this without being forced by statute.

MR. CALLAWAY:
We have a number of municipalities around the LVMPD. While we may be testing every handgun or shell casing we recover, North Las Vegas, Henderson and school police may not be. We try to work with those agencies to ensure casings are turned over to us for testing, but since nothing in statute requires it, we cannot guarantee we are connecting all the dots.

SENATOR HANSEN:
I represent six other counties besides Washoe County. Do those rural counties reach out to you? Are they aware of the technology? Is there hesitation on their part to get involved? I want to make sure we catch the bad guys there, too.

MR. CALLAWAY:
The equipment is expensive. We hope that rural agencies submit shell casings or firearms from crimes to Washoe County or to the LVMPD. We did not want to put a mandate on those small counties that may not have the equipment or the ability.

ASSEMBLYMAN ROBERTS:
Part of the appetite to show we are serious about this is to obtain additional machines. A machine could be placed in another county if it had a sufficient amount of shell casings and shootings. Until then, every county can participate and many do.

SENATOR PICKARD:
This is the commonsense approach we have been searching for, particularly since it allows us to participate in a program that will mandate participation in a system that actually connects guns to the bad guys using them.

What is the typical turnaround time from the moment a gun is recovered to the time the information input in the system is made available to law enforcement agencies?

ASSEMBLYMAN ROBERTS:
The LVMPD did not have a good turnaround time in the past, as we would enter the data in the system up to five days after a crime occurred. The key is timely entry, which is what I found in Milwaukee and in some of the other places I visited. The Las Vegas Metropolitan Police Department set a goal of 72 hours because if you have somebody with a crime gun, the first thing he or she does

when one is stolen is test fire the gun outdoors. This rapidly escalates to shooting people. The key is to get those shell casings entered in a timely fashion so police personnel can be deployed. We are doing that. The fusion center and the gun intelligence center analyze all the hits and deploy personnel based off those hits. The goal is to prevent crime rather than react to crime, and timely entry is a must.

That said, it took a considerable amount of manpower to get the LVMPD ramped up to do that. We added a second firing range in our laboratory along with a forensic scientist, and we put light-duty officers out to handle the load. I do not know if Washoe County is ramped up as much, but we believe Clark County can handle it. We wanted to show the importance of this. Once we started getting hits, people started believing in it and utilizing the system.

SENATOR PICKARD:
How do we encourage other agencies without this system to do this? I assume there is a charge for the service. How does that work?

ASSEMBLYMAN ROBERTS:
There are two main crime laboratories in the State; both have the NIBIN entry. Assembly Bill 272 allows for the charging of services; LVMPD does not at this time. We added the ability to charge a fee in case we have to hire more people to handle more workload, though we do not believe that would be necessary.

CHAIR CANNIZZARO:
This program is utilized in some circumstances, and this bill would ensure we are utilizing it more frequently. Is that correct?

ASSEMBLYMAN ROBERTS:
That is correct. The Las Vegas Metropolitan Police Department developed our program over the last two years, and we use it in a lot of crimes. This bill would allow those agencies that are not participating to participate.

CHAIR CANNIZZARO:
Pieces of legislation like A.B. 272, as demonstrated in other states like Delaware, will help keep guns out of the hands of people who should not have them, correct?

ASSEMBLYMAN ROBERTS:
You are correct.

MR. SOLFERINO:
The Washoe County Sheriff's Office supports A.B. 272.

The NIBIN system has been in our crime laboratory since approximately 1998. It is not mandatory. As part of our memorandum of understanding with the ATF, we are not allowed to charge rural counties a processing fee. Once data has been collected and it meets certain criteria, our agency enters that data into NIBIN free of charge.

Compared to Clark County, we process about 60 firearm cases a month as of last month, and 40 meet the criteria to be entered into NIBIN.

ASSEMBLYMAN ROBERTS:
I will send the Committee an article that discusses the success rates of Delaware and New Jersey after the implementation of NIBIN.

CHAIR CANNIZZARO:
I will close the hearing on A.B. 272. I will open the hearing on A.B. 195.

ASSEMBLY BILL 195 (1st Reprint): Revises provisions governing crimes against property. (BDR 15-130)

ASSEMBLYMAN EDGAR FLORES (Assembly District No. 28):
I will begin my presentation of A.B. 195 by providing some background on scanning—skimming—devices. Skimmers are devices placed over gas pumps or ATM machines. The skimming device looks identical to a card reader. To the untrained eye, one would not realize he or she was swiping a card through a skimming device placed unlawfully on a gas pump or ATM machine to steal credit or debit card information. The inserted credit card goes through both the skimming device and the legitimate device. A PIN number is input, and one can fuel his or her vehicle. Unbeknownst to this individual, that credit or debit card information has been captured.

Traditionally, criminal organizations would wait for 20 to 40 people to use the device or leave them for the weekend. They would then come back, remove that skimming device and extract that information to be used for unlawful

purposes. Typically, debit cards are cloned and sold on the black web or used by the criminals themselves.

With technology, however, criminals have become more sophisticated. Now skimming devices do not have to be removed from gas pumps or ATM machines. Using Bluetooth technology, information can be extracted simply by driving by or walking past the device. This has made law enforcement's job a lot more difficult. In the past, once a skimming device was identified, a sting operation would be set up and an arrest would be made when the criminals arrived on the scene and removed that device.

This leads to another issue. Possession is technically a crime, but unlawful intent must be proven. Most small business owners have a skimming device such as a little cube on a phone or a device that collects information to charge clients. Obviously, these devices are being used for lawful purposes. Statute must include language that indicates an intent to use these devices unlawfully. This creates a whole new hurdle for law enforcement and the offices of the district attorney because it cannot always be proven.

Section 1, subsection 1, paragraph (a) of A.B. 195 states, "Install or affix, temporarily or permanently, a scanning device within or upon a machine with the intent to use the scanning device for an unlawful purpose."

Section 1, subsection 1, paragraph (b) states, "Access, by electronic or any other means, a scanning device with the intent to use the scanning device for an unlawful purpose."

This language of A.B. 195 makes abundantly clear it is now a crime to simply install a device or for someone to drive a vehicle right next to it and collect that data via Bluetooth technology. That is our intent.

Section 1, subsection 1, paragraph (c) covers the possession of a scanning device with the intent to unlawfully use.

Section 1, subsection 3 attempts to create as broad a definition of "machine" as possible. It is any "machine used to conduct financial transactions, including, without limitation, an automated teller or fuel pump." We are trying to cast as wide a net as possible; if a skimming device is placed on anything, we are going after them.

BRIAN O'CALLAGHAN (Las Vegas Metropolitan Police Department):
I have met everybody on this Committee, and you know the issues. Detective Michael Gomez will go through a short presentation.

MICHAEL GOMEZ (Las Vegas Metropolitan Police Department):
I will begin the presentation (Exhibit C) with statistics regarding skimmer recovery. The numbers have dramatically increased. As of last night, there have been 48 this year as opposed to a total of 265 last year. These increases have been mostly gas pump skimmers. Financial loss from an installed skimmer can be through personal or company cards. We had an $85,000 loss from one company card. In an extreme case, a local company lost $175,000. Personal cards are hit all the time. Most skimmers average 30 to 40 cards per skimming device. A skimming device can be read via Bluetooth by any individual who knows it is there and is paired to it. A criminal can get $3,000 to $5,000 per skimming device from the account information contained on that device. In 2018, a loss of approximately $37 million was experienced from the 265 skimmers recovered. Data captured on the device is not erased.

Slide 4 shows an image of a handheld, presquare-type scanning device. It is plugged into a desktop, downloads, hits a merchant account and conducts the process of a transaction. These devices are used by criminals to scan the magnetic stripe of customer credit or debit cards. These devices can hold up to 8,000 cards, and can be broken down to make skimmers.

Slide 5 shows a skimming device that was installed at a local casino. It is the same color scheme, make and model as the original. It is a modified part of the original machine that fits over the card reader. When these are installed, an individual's card will work properly with the machine. If there is a light feature, the light feature will illuminate. It is only stuck on with double-sided tape, so it would peel off the machine if pulled.

Someone could stand behind the subject and not see a device being installed; the criminal looks like a regular tourist using an ATM. It takes a total of 17 seconds for someone to install a skimming device onto a machine. These devices were used at this casino for cash withdrawals of approximately $5,000 each.

Slide 6 shows a machine at a local mall. The photograph on the left is the device removed; the one on the right shows the device installed. Notice the

color scheme is the same; these are designed specifically for the machines. On the left, there is residue where the double-sided tape is located just above the card reader and above the dispenser for the receipt.

The next slide shows the device being removed. The image on the left shows the battery and the camera that captures personal identification numbers (PIN). The one the top right is the card reader being removed. The bottom right is the pinhole that faces the PIN pad to capture PIN numbers, unbeknownst to customers using the machine.

The video shows how easy it is to peel the device from a local machine. The batteries in these devices can last 20 days.

Slide 8 shows point-of-sale terminals. The implementation of Europay, Mastercard and Visa (EMV) cards has cut down on these a little. These are found more on self-checkout lines or non-EMV compliant machines, placed directly on top of the machine, and are easy to remove. All devices have the same principle: scan, copy, memorize and store all information that slides through them.

Slide 9 shows other examples of skimmers that we have here in the states.

Gas pumps are some of our biggest problems. Slide 10 shows security stickers used by many local providers to prevent the installation of skimming devices. They leave a residue that reads VOID when peeled. We try to educate our citizens to look for them, but the stickers are being bypassed by criminals. It has helped with the detecting and recovery of a lot of skimmers, however, as they are all serialized. We tell people to look at the pump to make sure there is more than one sticker and the numbers should not match, but they are just stickers.

Slide 10 shows images of locks. Every pump has a lock, but every lock has a pick for it; criminals can also pry the lock open with a pry bar.

Slide 11 shows an example of a Bluetooth skimmer. It is a breakdown from top to bottom. The blue plug connects to the PIN pad from the back of the pump to obtain the PIN pad data. The chip set that broadcasts the Bluetooth is shown on the right. The Bluetooth can be read from 30 feet to a half mile away with the

proper setup. The lower portion connects to the reverse side of the card reader that captures the card information from the magnetic strip.

Slide 12 is an image of the Bluetooth skimmer installed inside a pump. Gas pumps are not EMV compliant, so criminals are able to capture everything from the magnetic strip in plain text.

Most of these skimmers are installed by runners; the person who downloads the data is the one in charge of everything. One reason for the increase in skimmers is that a lot of runners realize the guy running the group makes more. They start their own group, and it spiders.

Examples of parasite skimmers are shown on Slide 13. The original card reader is removed and an additional computer board, shown on the right, has the broadcaster for Bluetooth included. These modified card readers are placed into the machine.

Assembly Bill 195 would help with the tampering of machines.

MR. SOLFERINO:
The Washoe County Sheriff's Office supports A.B. 195.

MR. SPRATLEY:
The Nevada Sheriffs' and Chiefs' Association supports A.B. 195.

DAVE DAZLICH (Las Vegas Metro Chamber of Commerce):
We support A.B. 195. This is good legislation that addresses some of the holes and the skimming issue.

MR. JONES:
The Nevada District Attorneys Association supports A.B. 195.

MR. CATHCART:
The City of Henderson supports A.B. 195.

BRYAN WACHTER (Retail Association of Nevada):
We support A.B. 195.

CHAIR CANNIZZARO:
I will close the hearing on A.B. 195. I will open the hearing on A.B. 307.

ASSEMBLY BILL 307 (1st Reprint): Establishes provisions governing the use of a gang database by a local law enforcement agency. (BDR 14-897)

ASSEMBLYMAN EDGAR FLORES (Assembly District No. 28):
A gang database is an important tool for law enforcement. The one from the LVMPD is the standard, and other jurisdictions have adopted it. The issues that were brought forth to me are whether everybody who is added as an affiliate or a gang member knows they are on it, and if there is any type of due process to be removed.

I grew up in a neighborhood right behind the Stratosphere Casino, Hotel and Tower in Las Vegas. Many individuals with whom I grew up ended up joining gangs. People would always ask, "Why do you hang out with gang members?" I always responded, "I am not hanging out with a gang member, I am hanging out with a kid I grew up with and have lived with for eight years." You meet someone when you are seven years old, and eight years later, the recruitment process for many of these gangs happens. My point is, in that scenario, I could potentially be an affiliate simply for hanging out with them, even though I was never involved in gangs. These are kids I grew up playing soccer with, we were friends, and we walked home from school together.

The other scenario are individuals who, when contact is made with them by law enforcement or at a jail, proudly fly their colors and show their tattoos. They are proud to be gang members and want that credit. Years down the road, they have families, are trying to get their lives together and realize they made a mistake. They want to move away from that life. I want to make sure those individuals have the opportunity to be taken off that gang database.

Lastly, it happens the least, but an individual can be wrongly identified as a gang member. I want that individual to have an opportunity to say, "I am not a gang member. This is mistaken identity. This is why you think that, but let me explain why not." They need to be given the opportunity to push back and explain why this is not the case.

I try to address those three issues through that lens and with that perspective with A.B. 307.

Section 1, subsection 1 explains if law enforcement uses a gang database, it must comply with certain requirements.

Section 1, subsection 1, paragraph (a) states the database "must be the database used by the largest local law enforcement agency in this State." The rest of the State is using whatever the LVMPD is using, so I wanted to keep that as a standard. However, I spoke with people from different jurisdictions, and they brought up a valid point. Although all agencies are using the same database, it is possible the LVMPD may choose to use a different database and the other jurisdictions could not afford to switch. I will work with those jurisdictions to amend this paragraph and give them this flexibility.

Section 1, subsection 1, paragraph (b) states, "If a person is registered in the database, the local law enforcement agency must provide to the person written notice of his or her registration. Such written notice must include, without limitation, detailed instructions on the process for contesting registration as provided in this section."

This goes to the original intent of A.B. 307. If somebody is going to be identified as an affiliate and/or a gang member, he or she must be notified in writing and given detailed instructions. I do not want to define those instructions, as every jurisdiction will have a slightly different variation of what is needed. We want those instructions to be handed to that individual or, in the case of a juvenile, to the parents, who then have the opportunity to say, "Here is how I can get off of this if I am going to contest it."

I do not mean for the written notice stated in section 1, subsection 1, paragraph (b) to be retroactive as there could be thousands of individuals entered in databases across the State. Requiring written notices going forward allows jurisdictions to implement this process and provides time to make needed adjustments.

Section 1, subsection 1, paragraph (c) states, "A person who wishes to contest registration in the database must be given the following period after receiving notification pursuant to paragraph (b) to contest registration in the database."

Section 1, subsection 1, paragraph (c), subparagraph (1) states, "For a person who is confined in a state or local correctional or detention facility, 10 calendar days." I spoke with the Department of Corrections (DOC) and was told this was

already being done. When someone is detained, his or her information is put through the system. If that individual is told, "We are identifying you as a member of X gang," he or she has the opportunity to push back and contest.

Section 1, subsection 1, paragraph (c), subparagraph (2) states, "For a person who is not confined in a state or local correctional or detention facility, 30 calendar days." On top of that, A.B. 307 gives them the opportunity to either submit something in writing and/or to request an in-person interview to contest their inclusion in the database. I want both options to be on the table.

The way one stays on the database is by contact with law enforcement. We want law enforcement to reach out to the public and for relationships to exist, but we do not want that outreach to be deemed contact for purposes of the database.

Section 1, subsection 2, paragraph (a) defines contact as "contact with a local law enforcement agency during the investigation of a crime or report of an alleged crime." If an individual shows up every time law enforcement investigates a crime, it will be entered in the notes.

Finally, if someone stays out of trouble and there has been no contact with law enforcement for five years, that person is automatically taken off the database, no questions asked.

That is the intent of A.B. 307. With the conceptual amendment, our stakeholders are either on board or in neutral.

SENATOR HARRIS:
How do you envision the process of contesting registration would work? Section 1, subsection 1, paragraph (d), subparagraph (1) states, "To submit to the local enforcement agency a written statement or other evidence." Is there a person this would be given to? Where is the point of entry? Is there a requirement to dedicate someone to review the evidence and make a determination?

ASSEMBLYMAN FLORES:
We did not define to whom the documents should be given because I want to give each jurisdiction the flexibility to assign a panel of two, three or one. However, if someone has been identified as a gang member or an affiliate, those

instructions are defined in the previously mentioned document so he or she understands exactly to whom that information is supposed to be given and what address to use.

I use the word "evidence" because we should leave it open to each individual as each circumstance will be different. Examples include statements or testimonies from teachers and friends. If someone had contact with law enforcement, an officer can submit a letter stating, "This individual has been staying out of trouble." I wanted to provide flexibility as well as the opportunity to submit documents in writing because not everybody is able to attend an informal hearing. The term "or" in line 19 on page 2 clarifies an individual always has one option or the other.

SENATOR SCHEIBLE:
This is good public policy. It is smart to give people a way to contest their inclusion in these databases, but A.B. 307 does not provide any kind of process for being removed. If I think I am registered on the database in error, this bill provides all the necessary tools to go to law enforcement and say, "Take me off the database." Where is the part that reads, "This is what Melanie has to show to get off the database," or "Since Melanie has proven she is not a member of a gang, she has to be removed from the database." I am worried we will see people having these conversations but not being removed.

ASSEMBLYMAN FLORES:
I understand your concern, and I have worried about that in the past. However, I wanted to give each jurisdiction the most flexibility possible without turning this into a 40-page bill by defining what is sufficient. We must have confidence in law enforcement agencies to remove someone from a gang database when sufficient evidence is provided. If, in two years, a host of individuals say, "This is what I provided to law enforcement, and they are refusing to take me off," we can put more forceful language in statute. Law enforcement abides by the strict rules in federal law when it comes to a database. Putting this language in NRS will jointly resolve the issue.

SENATOR SCHEIBLE:
I agree that we should not produce solution-seeking problems. I hope A.B. 307 solves this problem.

Regarding the five-year contact with law enforcement, would it include somebody who has been incarcerated for five years?

ASSEMBLYMAN FLORES:
I have not walked through that analysis. It is not my intent. However, the DOC may push back because there are gangs in our corrections system. I would assume if an individual incarcerated for five or more years demonstrates he or she stayed away from gang life, stayed out of trouble, had tattoos removed or did not get new tattoos, he or she will be taken off.

SENATOR SCHEIBLE:
I thought this bill sets forth an automatic removal after five years.

ASSEMBLYMAN FLORES:
That is correct.

SENATOR SCHEIBLE:
There is probably a small subset of individuals who would be on the registry and in prison for five years. If someone commits a gang crime in 2019, is sentenced in 2020 and is released from prison in 2030, will he or she be automatically removed from the list because there was no law enforcement contact in those 10 years?

ASSEMBLYMAN FLORES:
That is my intent. If someone is in jail and has maintained relationships with gang members, that person should remain in that database. The Department of Corrections may operate slightly differently, and someone from that Department would be better suited to address how gang culture works and whether it is reasonable to do that. After we have that conversation, I will determine if an amendment is needed.

SENATOR OHRENSCHALL:
In my work as a public defender, I have met people who have ended up on that registry, oftentimes due to circumstances beyond their control, such as family relationships and neighborhoods where they grew up. This bill will try to help make sure folks who are gang-affiliated are in the registry and those who are not are not.

MR. CALLAWAY:
The Las Vegas Metropolitan Police Department supports A.B. 307. We worked closely with Assemblyman Flores on this bill before Session began. The Las Vegas Metropolitan Police Department is doing most of what this bill directs. We have a process and a detailed policy regarding the use of our gang intelligence database, and that is precisely what this information is: intelligence. It is not criminal information. I spoke on a different bill about connecting dots and helping law enforcement solve crimes, and this information does just that. For someone to be placed into the gang database, we have to show two or more clear and articulable facts that the person is a gang member or an associate of a gang member.

People often say, "associate of a gang," but one is entered in as an associate of a person in a gang. If Eric Spratley is a gang member and I am with him every time a police officer encounters Eric, I am an associate of Eric. Eric is the gang member and I am an associate of Eric, not an associate of the gang.

If the person is a juvenile, the LVMPD performs a home visit and sends a letter to his or her parents. Our hope is to divert that child away from the gang environment, and we have a number of methods in place. Our community engagement team is active in going to someone's residence and sitting down with the juvenile and family members to try to get the kid out of the gang environment.

Adults are sent letters that outline the process for them to appeal, either by writing down their reasons or visiting us in person, the fact that their information is being put into the gang database. We have a committee, made up of the commander of the gang bureau and members of our community engagement team, that reviews appeals. The committee takes into consideration a number of things such as going to faith-based organizations, statements from community members, teachers and family members, and employment records. In many cases, people do have their information removed from the database. We strictly follow federal law, Title 28 CFR Part 23 (2018), which has clear, strict measures on when information no longer has a criminal predicate and must be removed.

MR. SPRATLEY:
The Nevada Sheriffs' and Chiefs' Association supports A.B. 307 with the intent and the conceptual amendment placed on the record by Assemblyman Flores at

this hearing. His conceptual amendment presented in the Assembly did not come out exactly as presented in drafting. We would like to support the language in section 1, subsection 2, paragraph (b) of this bill. We also want to make sure other jurisdictions are not bound by the LVMPD database should it choose to change. We are confident Assemblyman Flores will arrive at language to accomplish this.

DYLAN SHAVER (City of Reno):
We support A.B. 307. We rely heavily on our colleagues in law enforcement for bills like this and did not engage in the Assembly. I went to Assemblyman Flores with our concerns, and he was thoughtful in his response.

Law enforcement wants to integrate with communities. That is where we live, work and where our families are. We appreciate the conceptual amendment and look forward to working with him as this bill moves forward.

MR. CATHCART:
The City of Henderson supports A.B. 307 with the conceptual amendment for section 1, subsection 1, paragraphs (a) and (b).

MS. WELBORN:
In a variety of states, we have had to force transparency via public records and lawsuits to find out how information was obtained, how it was used against a person, and how a person got on a gang database. We found there were no processes in place for a person to remove his or her name from that gang database. We appreciate that opportunity will soon be made available here.

The American Civil Liberties Union of Nevada supports A.B. 307.

KRISTINA WILDEVELD (Nevada Attorneys for Criminal Justice):
I am testifying in support of A.B. 307 on behalf of the Nevada Attorneys for Criminal Justice and as a private criminal defense attorney.

Assembly Bill 307 is an important piece of legislation to help standardize the method by which individuals are classified as gang members by law enforcement. More importantly, the bill provides individuals the ability to challenge their inclusion in a gang database and a procedure to petition for their removal. This is an important feature of the bill because, as the law stands, law enforcement can classify anyone as a gang member without notice provided to

that individual; there is no method to contest his or her inclusion in such a database. This is especially important for an inmate, as classification as a gang member can have a significant impact on prison housing, the availability of programming, parole eligibility and parole revocation hearings.

I appreciate Assemblyman Flores' indication that prisons are doing this. However, as a person who practices in this area and works with the prison in trying to remove people from the database, I am the only person to date who has had a successful security threat group removal hearing—that was with the Office of the Inspector General (OIG) in 2016. I have not heard of any since, although inmates kite requests to be removed from the prison database to the OIG and their caseworkers.

There used to be the debriefing program in which a prisoner went through an intensive process to be removed as a known gang member wherein the inmate would supply the OIG with information on gang affiliations within the prison. This put his or her life at risk and initiated a move into administrative segregation. It is my understanding this process no longer exists.

I am concerned with the ten-day process. Nothing happens in prison within ten days, and inmates are unable to do anything about notices if they are in the fish tank.

I look forward to having agencies follow these policies once this bill is implemented.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):
We support A.B. 307 and adopt all the comments made in support of this bill.

MS. RASMUSSEN:
The Nevada Attorneys for Criminal Justice supports A.B. 307. This is a great opportunity to allow people to move forward with their lives.

ASSEMBLYMAN FLORES:
I am going to continue to work with the stakeholders on a conceptual amendment for the Committee's review.

CHAIR CANNIZZARO:
I will close the hearing on A.B. 307. I will open the hearing on A.B. 336.

ASSEMBLY BILL 336 (1st Reprint): Establishes provisions relating to certain victims of crime. (BDR 16-46)

ASSEMBLYMAN EDGAR FLORES (Assembly District No. 28):
The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity.

Congress created the U visa with the passage of the Victims of Trafficking and Violence Protection Act of 2000 (TVPA). This legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of humans and other crimes while protecting victims of crimes who suffered substantial abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. I wanted to put that on the record. This is federal law.

Say I was a victim of domestic violence. The first thing I would do is complete Form I-918 Supplement B. I would submit that form to law enforcement; I will use LVMPD as an example. I would identify in that form that I was a victim of domestic violence, the date it happened, and include any other information related to that incident, such as a police report, to support that claim. Law enforcement would verify my information, certify the form by signing off on it and send it back to me. I would then attach that form to Form I-918. If there were other issues, I may have to get a waiver and there may be a filing fee. I would submit all documentation to the U.S. Department of Homeland Security. Once submitted, the U.S. Department of Homeland Security will conduct a weighing of the equities; there is a five-to-seven year minimum wait time.

I want to make it clear, law enforcement signing the Form I-918 Supplement B does not do anything except start a process. A lot of Forms I-918 Supplement B are signed and, after going through the vetting process at the federal level, individuals are denied. Those individuals will not know until five to seven years later. As time passes, that time frame keeps growing.

Unfortunately, document certification rules created by every jurisdiction in Nevada are outside the intent of Congress. Using my hypothetical where I was a victim of domestic violence, the internal policy of the LVMPD prohibits a document to be certified if an incident happened over five years ago. This policy is in place for a host of reasons, including the fact that the LVMPD was getting a lot of requests, and it is easier to look through a database and find files that are up to five years old. There was no ill intent; however, if that same hypothetical were true in a different jurisdiction, the form would be signed.

We have the same scenarios taking place in different parts of the State with different actions taken by law enforcement. That is a problem because Congress never specified when a crime needed to have occurred in the TVPA. As long as a victim cooperated with authorities and the incident took place within the United States, he or she should be able to apply. There are inconsistent rules regarding whether a form is signed within the State, and A.B. 336 addresses this.

Additionally, law enforcement is not always directly involved in an incident, so A.B. 336 expands who can sign off on Form I-918 Supplement B. Say a child has been horribly abused and cooperates with Child Protective Services (CPS). If the act of that child cooperating leads to that child being removed and taken out of his or her home, that child is eligible to request a U visa. The problem is that there is no formal investigation by law enforcement. Many organizations submit evidence to CPS as well because the federal definition includes CPS. Congress realized there are scenarios like I just mentioned, and CPS should be able to sign off on the forms. However, the way federal law is being interpreted in the State, CPS refuses to sign off. It is problematic because that is the only way the child can prove he or she cooperated.

The third issue A.B. 336 addresses is a time frame for certification. In my experience as a practitioner in the immigration world, law enforcement certifies those forms quickly. It might not be true in every jurisdiction in the State, and it may not be true for every single case, but I usually receive a response to a request within a month.

However, there are situations where time is of the essence. If someone is considered a minor under federal law, the child and his or her parents are eligible for a U visa. In scenarios where children are about to age out, that certification needs to turn around as quickly as possible so the application can be submitted

to the federal government before the age out happens. Even though the vetting process can take five to seven years, the U.S. Department of Homeland Security will freeze the child's age to allow the parents to be eligible for U visas. In that scenario, we do need a faster response from law enforcement.

Another scenario addresses individuals in confinement and on an immigration hold. Say I am undocumented and I am pulled over by law enforcement due to an outstanding warrant for failure to pay a ticket. Law enforcement will take me to jail and run me through a 287(g) program, which is the way the U.S. Immigration and Customs Enforcement (ICE) makes a determination of probable cause. I will be placed on a 48-hour hold, so even after I pay the ticket or try to bail out, I will be held anyway. Officers from ICE will arrive and take me to either Henderson or Pahrump if I am in southern Nevada. They will try to remove me from the Country because I am undocumented, but I was recently a victim of a crime so I remain in detention. The U.S. Department of Homeland Security can weigh the equities and say, "Look, Edgar did not pay a traffic ticket and has been here unlawfully, but he was also a victim of a horrible crime, he cooperated fully and testified against this other person. He has done everything else right, he is a parent raising three great kids." With all of these positive factors at play, the U visa can trigger and be expedited when someone is detained. In that hypothetical, this document provides one more tool to help expedite that person's release, so it needs to be certified quickly.

Those are the issues addressed in A.B. 336.

Section 2 explains the definitions are those ascribed per this language.

Section 3 defines "certification" and talks about the certification process.

Section 4 defines what "certifying agency" means. Subsection 4 speaks to that CPS issue I addressed earlier. If we look at the definition of certifying agency at the federal level, there is a specific reference to CPS.

Section 5 defines "certifying official." We want to give agencies the flexibility and authority to appoint the person who certifies these documents; there may be more than one person appointed.

Section 6 talks about criminal activity. Just because someone is a victim of a crime does not mean he or she is eligible for a U visa. U visas and the Violence

Against Women Act of 1994 provides lists of horrible crimes that qualify and are what "criminal activity" refers to in this section.

Section 7 states a petitioner is the person who submits the form.

Section 8 explains the process by which the certifying agency deems someone a petitioner and how that works. When a Form I-918 Supplement B is submitted to law enforcement personnel, they will first ask, "Was this person a victim of the crime he or she is claiming?" They will look for a police report and other evidence such as medical documents or court records attached to the form. The next question asked is, "Has he or she been helpful?" This is a requirement, and law enforcement will know that. If someone is deemed a victim and he or she cooperated, law enforcement should certify the document.

I want to make abundantly clear that law enforcement should only be focused on those two questions. It is not law enforcement's job to make a determination of a weighing of the equities; that will happen at the federal level once the application is submitted. The role of the certifying agency is only to determine if the individual was a victim and if he or she was helpful. It is also made clear at the federal level that someone does not need to be convicted as a consequence of this. Often, perpetrators are not caught; armed robbery would be an example of this.

Law enforcement can also retract a document after it has been certified. Say a form was signed on Monday, the victim was asked to cooperate Wednesday through Saturday, but he or she refused. We want to give law enforcement the flexibility of a rebuttable presumption, but this is the only scenario where that should happen.

Section 9 talks about time and when it is of the essence. A certifying agency should process a document within 90 days of its receipt. That is two to three times longer than needed, and agencies should be comfortable with meeting that deadline. Time will be critical if an individual is 20 years old or is in removal proceedings and the burden to demonstrate his or her age or if he or she is confined on an ICE hold would fall on the petitioner. If one of those situations has been demonstrated to the certifying agency, this bill requires the form to be signed within 14 days.

We added a protocol in section 10, subsection 2 for situations where somebody is deaf, hard of hearing, speech-impaired or does not speak English. Human trafficking is a huge problem in the State. Often people are brought from other countries for this purpose, and sometimes they manage to escape. We want to make sure there are wraparound services for those individuals which include the opportunity to obtain U visas. We want that person to have the courage and say, "I am going to help," and for law enforcement to say "Not only are you helping a lot of people by speaking up and helping yourself, but we are also going to help you through this U visa process, so that you are put on a pathway, per federal intent, to hopefully get a U visa and remain in this Country."

Section 10, subsection 3 creates reporting. The language was amended in the Assembly at the request of law enforcement. We want to know how many certifications are being requested every year, how many are completed, denied, and the basis of the denial. This is a great way for the State to determine how vulnerable populations are being taken advantage of. Say the data indicates 80 percent of these situations are due to domestic violence, we can create more of those types of services for our vulnerable populations.

In closing, I want to make it clear that certifying agencies signing off on a Form I-918 Supplement B do nothing for purposes of immigration law; it only starts the process.

This is federal law. Congress was clear in giving the State directions as to what it should certify. The intent of A.B. 336 is to create uniformity by ensuring every State jurisdiction has the same process, per federal intent, for the certification of Form I-918 Supplement B.

SENATOR PICKARD:
Is the intent for language in section 9 to read 20 years old or less, or is there something significant about the petitioner being 20 years old?

ASSEMBLYMAN FLORES:
Twenty years is the only age where processing time is critical. Per immigration law, an individual becomes an adult at 21 years old. If someone is 19 years old or younger, time is not of the essence because you have time for that certification to take place. At the age of 20 years, an individual is at the risk of

turning 21. We did not want every situation involving a minor to be treated as if it was urgent because we have time.

SENATOR PICKARD:
I did not realize federal and State laws were different on the age of majority.

SENATOR HANSEN:
I have a question regarding section 10, subsection 1, paragraph (a). This is all about law and balancing things. Why would a petitioner's immigration status not be disclosed?

ASSEMBLYMAN FLORES:
This section stays true to federal law and Congressional intent. In 2000, Congress realized there was a host of victims who, because of their immigration status, were not coming forward. Say a woman is a victim of domestic violence and she lives with a U.S. citizen. That citizen says, "If you speak up, immigration is going to come get you." This was the pattern used against this vulnerable population. We want the victim to know he or she will not be subjected to any other repercussion at the immigration level. We are staying true to federal law, and, unless it is required, the State will not use an undocumented status against someone. We do not want people to say, "The State is now authorized and has information wherein it identified me as a DACA recipient, and that is somehow going to impact me negatively."

SENATOR HANSEN:
This is the heart of A.B. 336. We are dealing with victims of crime who are undocumented, being blackmailed in some way, fearful to bring anything forward and, therefore, remain victims. This bill tries to prevent them from being additionally victimized by people who use deportation as a weapon.

MS. WELBORN:
The American Civil Liberties Union of Nevada appreciates A.B. 336 and the effort to move the needle forward in protecting vulnerable populations.

KEYLA TERRONES:
I will read a portion of Rebecca Terrones' testimony (Exhibit D). She is unable to be here, so she prepared this testimony to give the Committee an idea of what kind of people A.B. 336 could help.

Good morning Madame Chair and Senate Judiciary Committee members. Thank you for allowing me to share my story this morning and why I am in support of A.B. 336. For the record, my name is Rebeca Terrones and I am representing myself as a mother and a victim of domestic violence.

I have lived in the United States for 29 years now. My journey began in central Mexico where I was held prisoner by my ex-father-in-law after my ex-husband left our family for the American dream. I was locked in a room every night, treated like a slave, and lived in misery.

My ex-mother-in-law saw how much I suffered, and it came to one night that she had the bravery to help me escape. I fled Mexico with my first-born daughter 29 years ago in the middle of the night in pursuit of a better future for my child.

Arriving to Reno, I found my ex-husband and with him, the same abuse I had suffered through in Mexico. He stole my first vehicle days after obtaining it, threatened to report me if I didn't do as he said and became physical when he tried to take my daughter from me.

I remember that night as if it had happened yesterday. My daughter was playing on the stairs close to the front door of our apartment when I heard her scream for help. I ran out and there he was, pulling her down the stairs as she held on to the rail absolutely terrified. I ran out to protect her, and he began beating me. He pinned me to the floor, struck me over and over while my daughter ran back into the apartment, and all I could think was that I needed to survive for her. I fought back even if I knew my efforts were useless compared to his strength. I needed to survive.

He finally stopped punching, but the nightmare was not over. He had a gun at home and threatened to return with it if I did not give him my daughter. As a mother, no level of fear will stop you from protecting your child.

> He left and although I was terrified law enforcement would turn on me, I feared more that he would come back and kill us both. I called the police and in my broken English, I explained what had happened. Reno police immediately arrived, treated my wounds, and I helped them track down his location. They found him driving back with a gun in the glove compartment and arrested him. That was the first time I felt safe in this Country, 24 years ago.
>
> I just come to you today to urge you to please pass A.B. 336, not only because this bill is my last hope of proving my case but because there are thousands of other people like me who have given everything to be a good citizen and have received countless "nos."
>
> As a mother, I could not leave my children alone in this Country to be claimed by the system.
>
> I want to thank Assemblyman Flores for all the work that has gone into this bill and for trying to give our struggle justice. I urge you to support this bill for many of us that are left hopeless. Thank you for the opportunity to share my story with you all today.

MS. ADLER:
As a Statewide organization working to decrease barriers for all survivors of domestic violence, the Nevada Coalition to End Domestic and Sexual Violence supports A.B. 336. The U visa process has been an important option for immigrant survivors of crime, including victims of domestic and sexual violence. This bill ensures victims who participate in the criminal justice system, often at their own risk, receive warranted assistance.

Our policy taskforce is aware of the problems caused by lack of clarity from local agencies tasked with the responsibility to process certifications, as well as the lack of consistency and application of federal law.

The provisions of A.B. 336 will take important steps to address these problems and help in providing necessary and deserved protections to immigrant victims of domestic and sexual violence and human trafficking. Both the sponsor and this Committee have shown that you get this perfectly.

This bill will also allow those of us in the advocacy community to be of more assistance with our limited resources and to know which agencies to direct immigrant victim survivors.

ERIKA CASTRO (Progressive Leadership Alliance of Nevada; Nevada Immigrant Coalition):
We support A.B. 336, which puts in place a process for local law enforcement to follow when unauthorized immigrants request U visa certification. When an unauthorized immigrant is a victim of a crime and participates fully in the investigation and process of that crime, he or she can do so without fear of deportation because federal law allows them access to U visas. This visa classification has strengthened the ability of law enforcement to investigate and prosecute cases of domestic violence, sexual violence, assault and human trafficking. Assembly Bill 336 articulates the process, standards and timelines local law enforcement should follow in preparing U visa certifications.

MAYRA SALINAS-MENJIVAR (UNLV Immigration Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas):
I would like to mirror the comments made before me. We support A.B. 336 and the attempt to bring uniformity to the way victims of crimes throughout our State are treated.

BRYAN MARTIN (Legal Aid Center of Southern Nevada):
We represent a vast number of individuals in these specific kinds of cases; U visa cases in the immigration group are our highest number of caseloads. We see many different instances where immigrant victims are hesitant to come forward and report for many of the reasons Assemblyman Flores indicated.

We support A.B. 336. I want to echo Assemblyman Flores regarding the expansion of certifying agencies. We have seen multiple cases in our office where CPS has not processed requests for U visas in situations involving child victims of sexual assault or sexual exploitation wherein no police reports were filed, perpetrators were never caught, and there was no other recourse or agency able to sign certifications. In those instances, we had to deny services to them because there was no avenue to get that kind of benefit. The changes in A.B. 336 provide an avenue for those vulnerable victims of those heinous crimes.

JULIE BOBZIEN (Volunteer Attorneys for Rural Nevada):
We began providing legal services, including assistance in family law matters, to victims of domestic violence in 2002. In 2011, we expanded our services to include immigrant victims of domestic violence and assistance with U visas.

The U visa program is intended to be a crime prevention program. Immigrant victims of domestic violence are especially reluctant to report abuse for fear of deportation and the loss of their children. The U visa program strengthens relationships between law enforcement and immigrant communities by encouraging victims to come forward. Batterers and other criminals are held accountable for their actions and, ultimately, this makes our communities safer.

Victims of crime who have been helpful with an investigation or prosecution become eligible to apply for U visas. Receiving certification is a part of the application program. We offer our services in 15 rural counties. As big as Nevada is, the logistics of that can be difficult to say the least. We have encountered different processes in different jurisdictions when requesting U visa certifications, which can be frustrating and confusing to an already vulnerable population. It makes it more difficult for us to provide meaningful services.

In the end, victims remain hidden, crimes go unreported, and criminals are never brought to justice. Passing A.B. 336 is an important step toward strengthening relationships between law enforcement and immigrant communities, streamlining and making uniform the U visa certification process and reducing crime in our State.

JOSE RIVERA (Nevada Hispanic Legislative Caucus):
We support A.B. 336. I would like to repeat all the sentiments that have been said.

ALEX ORTIZ (Clark County):
We oppose A.B. 336. We spoke with the sponsor about our concerns. We are not opposed to the U visa program or its use; however, we do have concerns with section 4, subsection 4, where it expands the federal definition of certifying agency to include "civil or administrative" authority. This would include CPS agencies and juvenile justice agencies. I defer to Catherine Jorgenson for further explanation.

CATHERINE JORGENSON: (Deputy District Attorney, Civil Division, Office of the District Attorney, Clark County):
Our concern is with the term "civil or administrative" under section 4, subsection 4 in that it impermissibly expands the federal definition.

As part of obtaining a U visa, a certifying agency must complete a Form I-918 Supplement B on behalf of the applicant who has been a victim of certain crimes. A certifying agency must be a law enforcement agency, a prosecutor, a judge or another governmental agency with criminal investigative authority. Federal regulations and statutes make it clear that a certifying agency must be part of the criminal process. I refer you to Title 8 CFR Part 214, subpart 14, paragraph (c), subparagraph (2), sub-subparagraph (i).

Neither the federal regulation which defines certifying agency, Title 8 CFR Part 214, subpart 14, paragraph (a), subparagraph (2) or federal statute Title 8 USC section 1184, paragraph (p), subparagraph (1), allow an agency with just civil or administrative investigative authority to be a certifying agency.

Including these terms in A.B. 336 would only cause confusion and would ultimately be preempted by federal law because it is an impermissible attempt to expand federal law.

To resolve this conflict, I have a couple of suggested amendments. The first would be to delete "civil or administrative" from section 4, subsection 4. The other option would be to delete the language in section 4 and replace it with a reference to the federal definition of "certifying agency" which is found in Title 8 CFR Part 214, subpart 14, paragraph (a), subparagraph (2). Either one of these amendments would resolve the conflict with the federal definition of a certifying agency.

SENATOR PICKARD:
When you say this is impermissible, is that your interpretation of the constitutionality of it? Are states under this law, as you read it, preempted from expansion, or are states able to expand at will?

MS. JORGENSON:
My interpretation is that it would be preempted under the U visa program, which is completely under federal law. Trying to expand the definition of a certifying agency would be problematic. The form clearly states it must be

signed off by one of those certifying agencies defined by federal law under penalty of perjury. The State would still have to follow federal law when trying to expand the definition.

VICE CHAIR HARRIS:
Is there a way to solve the problem the Assemblyman is looking to solve, or are we handcuffed by that criminal language? Is there some way to massage it so those who are doing child protective services may be able to perform the certification or maybe put in some kind of expedited process?

MS. JORGENSON:
The CPS concern cannot be solved by trying to expand the definition of certifying agency. Under the federal definition, CPS in other states have criminal investigative authority. However, CPS in Nevada does not. I am not suggesting the Legislature would want to do this, but the only way I see to come in line with the federal definition is if CPS is given criminal investigative authority under State law.

VICE CHAIR HARRIS:
What might happen if A.B. 336 passed and Form I-918 Supplement B was signed or certified by an agency that meets the definition under statute but not under federal law? Do you think the application would be rejected or that detail would not be caught?

MS. JORGENSON:
I do not know what would happen on the federal level if it was discovered by the U.S. Department of Homeland Security. My advice to my client, in terms of CPS or any other civil or administrative agency that does not have criminal investigative authority, would be that signing that document under penalty of perjury would run the risk of being found in contempt or something unfortunate occurring.

MR. CALLAWAY:
The Las Vegas Metropolitan Police Department is neutral on A.B. 336. We are in support of the concept behind the bill. For the record, we submitted an amendment which never made it into this bill, and I would like to withdraw that amendment. There may be times under section 9 where it may be difficult to verify and confirm a request packet within the 14-day time period due to

incomplete or inaccurate information. I do expect that folks falling into that 20-year-old, 14-day time frame will be a small number of packets we receive.

MR. JONES:
The Nevada District Attorneys Association is neutral on A.B. 336. I want to adopt some of the statements made by Mr. Callaway and also point to the notation in section 10 that states a certifying agency shall not disclose the immigration status of a petitioner unless it is mandated by federal law or court order. District attorneys are under a unique obligation in that we are required by both federal and State constitutions and by State law to turn over impeachment evidence of any victim or witness to defense attorneys. The fact that a victim has requested a U visa certification from our agency or the agency which is investigating the underlying crime would be impeachment evidence. I am required to turn that over to defense, regardless of intent.

ASSEMBLYMAN FLORES:
I appreciate the explanation of certifying agencies by Clark County, though I disagree with it. Title 8 CFR Part 214, subpart 14, paragraph (a), subparagraph (2) is the specific definition. I will read it for the record: "Certifying agency means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity."

"For the investigation" is where this would fall. Certifying agencies do not have to prosecute. In the case of CPS, if a juvenile says, "I was raped," it will investigate to see if that was, in fact, true. That is all the certifying agency must do. No criminal proceeding is required.

To continue, "This definition includes agencies that have criminal investigative jurisdiction." It reads "includes," not "must have criminal investigation jurisdiction." The definition is being expanded; it continues: "in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor." The federal government wanted to cast a wide net, and we have to remember immigration law is federal law. I say this because federal law cannot be inconsistently applied throughout the states; states can take the general federal definition and try to make it work with the state definition. It would be unfair if someone is eligible for something in California but not in Nevada.

This notion of criminal jurisdiction is incorrect. It is sufficient for us to say "the investigation" because CPS does that. Again, the federal definition itself includes CPS, so the U.S. Department of Homeland Security would not say, "We will respect CPS in California but not in Nevada." This is not logical.

I realize the certification process is new to Clark County, but the process has to be this way because CPS is the only authority with the ability to certify documents in scenarios that do not involve law enforcement.

Law enforcement representatives offered three amendments on the Assembly side. I adopted one immediately, and I promised I would work with them on the other two. I know they have had the opportunity to speak with other stakeholders, and we are comfortable with moving forward with the bill as it stands.

Remainder of page intentionally left blank; signature page to follow.

VICE CHAIR HARRIS:
I will close the hearing on A.B. 336. This meeting is adjourned at 10:45 a.m.

RESPECTFULLY SUBMITTED:

Jenny Harbor,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	6		Attendance Roster
A.B. 195	C	15	Las Vegas Metropolitan Police Department	Presentation
A.B. 336	D	2	Keyla Terrones	Letter of Support from Rebeca Terrones