

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
May 14, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:16 a.m. on Tuesday, May 14, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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 Jason Frierson, Assembly District No. 8
Assemblywoman Selena Torres, Assembly District No. 3

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Michael Kagan, Immigration Clinic, University of Las Vegas, Nevada
Jorge Padilla
LaLo Montoya, Make the Road Nevada
Jim Hoffman, Nevada Attorneys for Criminal Justice

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Holly Welborn, American Civil Liberties Union of Nevada
Maureen Kilkenny, Indivisible of Northern Nevada
Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender,
Washoe County
Hardeep Sull, Chair, American Immigration Lawyers Association, Nevada
Advocacy Chapter; Cochair, American Bar Association's Section of
International Law's Immigration and Naturalization Committee
Erika Castro, Organizing Manager, Progressive Leadership Alliance of Nevada;
Lead, Nevada Immigrant Coalition
Jose Rivera, Nevada Hispanic Legislative Caucus
Cecia Alvarado, State Director, Mi Familia Vota
Michael McDonald, President, Committee for Family and Criminal Law Reforms
Bliss Requa-Trautz, Director, Arriba Las Vegas Workers Center
Chuck Callaway, Las Vegas Metropolitan Police Department
Eric Spratley, Nevada Sheriffs' and Chiefs' Association
Mary-Sarah Kinner, Washoe County Sheriff's Office
Janine Hansen, State President, Nevada Families for Freedom
Annette Magnus, Executive Director, Battle Born Progress
Emily Persaud-Zamora, Executive Director, Silver State Voices
Leonard P. Jackson, Reverend, Executive Director, Faith Organizing Alliance
Kevin Wong
Quentin Savvoir, Political Director, Make It Work Nevada
Bill Stanley, Southern Nevada Building Trades Union
Jagada Chambers
Otistine Brown
Zachary Kenney-Sontiwan, Mass Liberation Project

CHAIR CANNIZZARO:

We will open the hearing on Assembly Bill (A.B.) 376.

ASSEMBLY BILL 376 (2nd Reprint): Revises provisions relating to persons in
custody. (BDR 14-675)

ASSEMBLYWOMAN SELENA TORRES (Assembly District No. 3):

You have the proposed amendment to Assembly Bill 376 (Exhibit C). The bill
requires the collection of certain data to be submitted annually to the Legislature
relating to the transfer of undocumented persons to the custody of federal
agencies.

MICHAEL KAGAN (Immigration Clinic, University of Las Vegas, Nevada):

I teach immigration law at the University of Nevada, Las Vegas (UNLV). Assembly Bill 376 is about transparency. It does not restrict police or jails from doing their jobs, instead addressing how police and jails interact with federal immigration enforcers. Local police cooperation with U.S. Immigration and Customs Enforcement (ICE) accounts for 80 percent of deportation cases beginning in the Las Vegas Immigration Court, which has jurisdiction over the entire State.

Section 287(g) of the U.S. Immigration and Nationality Act is primarily a staffing program by which local agencies lend officers to ICE to serve in jails. Some Las Vegas jails do not have a 287(g) program but cooperate with ICE by reporting people to and holding them for ICE. The 287(g) program essentially has to do with staffing and who fills out the paperwork. What matters most for affected people is whether they are transferred to ICE; that is the bill's focus.

In Nevada's jails, the most serious offenders are booked alongside the most minor offenders. People arrested for violent crimes are booked with those who simply did not pay a traffic ticket. At the UNLV Immigration Clinic, we routinely receive calls, requests and pleas for legal assistance from people turned over to ICE whose worst offense is an unpaid traffic ticket, trespassing when they sell things in prohibited spaces and things of that nature. We have seen cases in which the Clark County District Attorney has dropped misdemeanor charges that morph into the beginning of deportation cases.

Immigration policies continually shift. In the City of Las Vegas Detention Center, we have discovered through public records requests that its policy is to report all foreign-born people to ICE. Policies of the Las Vegas Metropolitan Police Department (LVMPD) have shifted many times. Recently, Clark County Sheriff Joe Lombardo told attendees of a Hispanics in Politics meeting that there is a problem with "creep" in changes in ICE priorities to focus increasingly on people without criminal records. Confusion lingers despite public promises that policies have changed. The UNLV Immigration Center continues to see people turned over to ICE after arrests for minor offenses.

All of this is a reason for increased transparency about how data is used about who is handed over to ICE to provide people with assurance. As an attorney who deals with crime victims, I would like to be able to tell clients they can go to the police for help without putting themselves at risk of deportation.

ASSEMBLYWOMAN TORRES:

If Person X is arrested and sent to jail, a 287(g) officer is present who is responsible for immigration-related bookings. If Person X is asked questions related to his or her immigration status, that happens independently of the initial booking officer. The purpose of A.B. 376 is simply to ensure public and individual police transparency. Public transparency is necessary because many community members lack faith in our police because they fear ICE detainers. This is often reinforced through the media. We see images of immigrants detained for nothing more than a traffic warrant. *The Nevada Independent* published an article listing 138 incidents in which ICE requested that the Henderson or Las Vegas jails place immigration holds on suspects booked for extremely minor crimes.

This has created a community scared to contact the police, which ultimately makes us all less safe when entire communities are underserved. It is not that crimes are not happening; it is they are not being reported.

Assembly Bill 376 also calls for individual transparency by ensuring, in section 1.5, that individuals are informed they will be asked immigration questions beforehand and why that information is being sought. The questioning is not required to stop, just that it will be about immigration. This would happen in any other setting. If ICE agents show up at someone's door, the person knows his or her answers will be used for immigration purposes. That is not necessarily what is going on in local jails, so people may think such questions are relevant to the crime of which they are suspected.

Assembly Bill 376 requires local law enforcement agencies to submit an annual report to the Legislature or Legislative Commission related to the transfer of people to the custody of ICE. As per Exhibit C, the report must include data on suspects' records of nonviolent misdemeanor crimes and demographic data. No other data not specifically listed in the bill may be provided. The reason is that we only intend to capture nonviolent misdemeanor offenders because that data will demonstrate if local agencies have detained individuals, they often claim they have not. We understand the need for the relationship between local law enforcement and ICE when it comes to detaining violent offenders. Local law enforcers are defined in section 1, subsection 4 as "designated entities."

JORGE PADILLA:

Section 1.5 of A.B. 376 amends *Nevada Revised Statutes* (NRS) 211 to ensure that someone about to be questioned about his or her immigration status knows the intent and reasoning behind it. The person should know that local law enforcement has a relationship with ICE through the 287(g) program and what the implications of answering questions could mean. That the person will automatically be informed creates individual transparency between the detainee and questioner.

SENATOR PICKARD:

We need transparency from public officers who work for us. Assembly Bill 376 seems to be a gotcha bill intended to catch law enforcers in a lie rather than trying to capture the entire picture. Why will the required report only list nonviolent misdemeanor detainees? If we want to get our arms around what is really going on, do we not want all of the information—on violent felonies and nonviolent felonies—that results in ICE violations? Why limit it to just what we think law enforcement may not be truthful about?

ASSEMBLYWOMAN TORRES:

This is not a gotcha bill. We know that 287(g) agreements are often used inappropriately. The intent is not to prevent those agreements, rather to understand if nonviolent offenders are being impacted by them. If the data proves law enforcers are honest about their activities and are conducting minimal transfers of nonviolent offenders to ICE, that will reinforce trust within our community.

SENATOR PICKARD:

Enforcing immigration is the job of federal authorities. It is their job to write the immigration rules, and that system is broken. If we want to build community trust, we do not want to frame this as wanting to lessen the effects on nonviolent offenders. We need all of the statistics to assess what is happening in Nevada, not on the national level. If we now require law enforcers to ask specific questions, does that not invite confusion? You said there is confusion in Clark County over multiple policy changes. We now criticize them for asking questions about immigration, yet the bill would require that. Is the intent to capture general, not personal, information? How do we lessen the confusion?

ASSEMBLYWOMAN TORRES:

The bill's intent is to assess whether local law enforcers are detaining individuals who should not be on ICE detainers. The purpose is not to assess the immigrant community, which you seem to suggest. We understand the reason for 287(g) agreements between ICE and local agencies.

Nowhere in Assembly Bill 376 are officers required to ask immigration-related questions. In section 1.5, "questioning a prisoner in the custody of a county or city jail or detention facility regarding his or her immigration status" would not happen every time.

SENATOR PICKARD:

In [Exhibit C](#), section 1, subsection 2, paragraph (d) states the report shall include demographic data about people transferred to ICE. If officers do not ask the questions, how will they obtain that information?

ASSEMBLYWOMAN TORRES:

That is all basic information local law enforcers would already get for their records.

SENATOR SCHEIBLE:

If people committing violent felonies are turned over to ICE, that is not a problem. The 287(g) agreements are legal and how the process is supposed to work. If, however, detained people with misdemeanor charges and no records are also being turned over to ICE, that is a mistake and a systemic problem. We only want to count the latter people turned over erroneously. This is not about pointing fingers and casting blame; it is about providing a picture of the extent of the problem and where it is occurring. Is that the intent of A.B. 376?

MR. PADILLA:

Yes, the intent is to evaluate who is falling through the cracks and being sent to ICE mistakenly.

SENATOR HANSEN:

Our first responsibility as Nevada Legislators is to support the laws and U.S. Constitution. The bill is essentially asking us to tell law enforcers to ignore violations of federal law. Whether they have committed a misdemeanor or violent felony, people here illegally have violated federal law. Why are we not turning every immigration violator over to ICE?

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ASSEMBLYWOMAN TORRES:

The job of local law enforcement is not to complete the job of federal law enforcement. In no way are local officers tasked with completing the job of ICE agents.

SENATOR HANSEN:

I have sworn an oath to defend the U.S. Constitution:

I, ... , do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding

I interpret that as having a higher obligation to federal law than to State law. We work diligently on this Committee to ensure that State law is in compliance and alignment with federal law. Since you took that same oath, do you not think that your responsibility is to ensure federal law is followed by State law enforcers?

ASSEMBLYWOMAN TORRES:

I do not recall which part of the Nevada Constitution explicitly provides that local law enforcers are obligated to deport or detain people for nonviolent misdemeanors.

SENATOR HANSEN:

That answer dodges my question. Either we do or do not enforce the laws of the Nation by swearing our oath of office. This is clearly an attempt to tell State agencies to ignore federal law when they encounter violations of it.

ASSEMBLYWOMAN TORRES:

Assembly Bill 376 simply asks officers to collect data. It does not prevent local law enforcers from detaining nonviolent offenders for possible deportation by ICE. The job of State government is independent of federal government; there are duties that State government can complete that federal government cannot and vice versa. State resources will be used to enact A.B. 376.

SENATOR HANSEN:

Collection of that data will obviously be done with the intent to find out something about how local and federal agencies interact. The idea behind the data collection is not to merely collect it; it is trying to get to something specific.

LALO MONTROYA (Make the Road Nevada):

I am an undocumented immigrant who has Deferred Action for Childhood Arrivals (DACA) status. For the last six years, I have been able to renew my DACA status every two years. If I have contact with police, my stay is in jeopardy.

I live with the fear of being separated from my daughter. When President Donald Trump was elected, my daughter, who was eight years old, asked me if I was going to jail because I am an immigrant. With a broken voice, I told her only people who do bad things go to jail. However, she was not that far off the fear that the Trump Administration has caused in my community. While we know police are on the front lines of keeping us safe, they cannot do so without our trust. Assembly Bill 376 is about police transparency. We want them to work for us and not break families apart for minor things like traffic tickets.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):

The Nevada Attorneys for Criminal Justice has many clients who are arrested and then deported for minor crimes. The U.S. Constitution has federalism encoded within it. State and federal governments do not always have to be in lockstep. We cannot disobey federal law, but we do not have to exactly enforce it. Federalism is an important check and balance. It is not exactly violating one's oath of office for a public employee to support the federalist part of the Constitution.

SENATOR OHRENSCHALL:

Is it not true that our Legislature has tried to work on State laws to help people on a path to citizenship who have had trouble with the law avoid deportation? They have paid taxes and been active community members. Former Senator Tick Segerblom sponsored a bill to change the penalty for a gross misdemeanor from 365 to 364 days so people who had committed crimes years ago would not face deportation.

MR. HOFFMAN:

It is important to remember these people are Nevadans. They may not have been born here or might be undocumented, but we owe each other a duty. Most Nevadans who fall through the deportation cracks do not deserve it.

HOLLY WELBORN (American Civil Liberties Union of Nevada):

The American Civil Liberties Union of Nevada (ACLUN) has filed many public records requests to find out how local agencies are enforcing immigration laws and using their 287(g) powers. Law enforcers also pledge an oath to uphold the U.S. Constitution; however, there are ways officers can unconstitutionally honor ICE detainees.

The detainer is an administrative warrant not supported by probable cause. We have seen patterns of practices in State jails in which people are held past the 48-hour requirement in violation of their Fourth Amendment rights. Several courts nationwide have ruled that is a constitutional violation. There is a balance in which officers must enforce the law against these nonviolent offenders while not providing them an opportunity to go through the process like any other criminal defendant.

MAUREEN KILKENNY (Indivisible of Northern Nevada):

I am the Immigration Issues Team leader for Indivisible of Northern Nevada, a nonpartisan coalition working toward solutions that lead to good community outcomes. We support A.B. 376 as a trust-but-verify contract between law enforcers and the community. We applaud law enforcers for publicly stating they will not detain anyone without a warrant or probable cause and for publicly distinguishing criminal activity from civil infractions.

KENDRA G. BERTSCHY (Deputy Public Defender, Office of the Public Defender, Washoe County):

I join Deputy Public Defender John J. Piro, Office of the Public Defender, Clark County, in supporting A.B. 376 because we need more data about what is going on in our communities.

HARDEEP SULL (Chair, American Immigration Lawyers Association, Nevada Advocacy Chapter; Cochair, American Bar Association's Section of International Laws's Immigration and Naturalization Committee):

My client, whom I will call Jane Doe, is a young single mother who has been a lifelong victim of domestic abuse. She was charged with domestic battery after

her partner accused her of domestic violence. We took the case before one of the toughest Las Vegas judges, who shows no mercy to victims of domestic battery. Jane was released on her own recognizance because her partner who had alleged the domestic violence against her had already been convicted of it. The judge is known for never releasing alleged criminals, so I was thrilled. I told Jane's family that she would be released.

As soon as Jane was released, an ICE detainer was placed on her, and she was taken back into custody. A bond was set by the immigration judge, but her family cannot afford to bond her out. I am Jane's pro bono immigration counsel, and I can say unequivocally that the ICE detainer policy destroyed her life. There was a profound lack of transparency in what happened to her. Jane's municipal court case is still pending because of the 287(g) policy. We are litigating her case in Immigration Court, but eventually she will have to go back to municipal court.

ERIKA CASTRO (Organizing Manager, Progressive Leadership Alliance of Nevada;
Lead, Nevada Immigrant Coalition):

Effective law enforcement requires the trust of the community. There is a perception that officers follow arbitrary and inconsistent procedures with regard to immigrants not authorized for transfer to ICE. The transparency required by A.B. 376 is needed to improve relationships between law enforcement and communities with high numbers of immigrants such as Nevada's Latin mix and Asian American and Pacific Islanders. Knowing when and why officers transfer immigrants to ICE who are not authorized will help dispel the widespread mistaken belief that local law enforcement is an arm of ICE. As an undocumented immigrant, I know the fears of the Hispanic community firsthand when we lack the right data and constantly hear stories like that related by Ms. Sull.

JOSE RIVERA (Nevada Hispanic Legislative Caucus):

Clark County Sheriff Lombardo has repeatedly asserted nonviolent offenders are not being rammed through the 287(g) program without discretion. If so, the Nevada Hispanic Legislative Caucus wants data to back that up. Assembly Bill 376 will encourage community trust in law enforcement.

SENATOR HANSEN:

Under federal law, is illegal immigration a criminal or civil act? On the one hand, we are talking about illegal immigration, but if detainees are in fact legally in the

Country, that is a totally different scenario. My understanding is law enforcers are enforcing federal criminal statutes.

NICOLAS ANTHONY (Committee Counsel):

Crossing the border illegally is a criminal offense. To stay in the Country illegally or to overstay one's visa is a civil matter.

CECIA ALVARADO (State Director, Mi Familia Vota):

Assembly Bill 376 does not interfere with commonsense police efforts. It is a step toward assuring crime victims and witnesses should feel safe in interactions with police in order to report and prevent crimes.

MICHAEL McDONALD (President, Committee for Family and Criminal Law Reforms):

So many Nevadans are adversely affected by our despotic family and criminal court system. People's lives are devastated when they are incarcerated. They lose their jobs, houses, children and vehicles. We need to reform, not just incarcerate, people. When a person has a criminal record, he or she is profiled and stigmatized when pulled over by police. The United States has 25 percent of the world's incarcerated population, here in the land of the free. We have a penal system that profits from jailing people and a federal incentive to mass incarcerate, not rehabilitate, them.

BLISS REQUA-TRAUTZ (Director, Arriba Las Vegas Workers Center):

Entering the Country without immigration inspection is a civil, not criminal, matter. The Arriba Las Vegas Workers Center supports A.B. 376 as a simple step to ensure transparency. We have been doing advocacy through inquiry using public records requests that reveal that hundreds of people have been placed in deportation proceedings due to local law enforcement involvement. At the bare minimum, the public deserves the truth about 287(g) policies and practices. Contrary to public statements from Sheriff Lombardo, many people with misdemeanor infractions have been transferred to ICE custody.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

The Las Vegas Metropolitan Police Department does not support A.B. 376 with the proposed amended, [Exhibit C](#). As a member of the 2017-18 Interim Advisory Commission on the Administration of Justice and the Nevada Sentencing Commission, I always pushed for a totality of data to get a clear

picture of issues under discussion. The proposed amendment cherry-picks data rather than giving a whole picture.

If LVMPD provides all data on everyone subject to the 287(g) program, we will not get 99 percent of data. Section 1, subsection 2, paragraph (e) of [Exhibit C](#) says agencies "shall not" provide data on the severity of detainees' crimes. In section 1, subsection 2, paragraph (d), "when available" should be added to the inclusion of demographic data. In some cases, people do not provide that data.

Today, we have heard that if someone is arrested for a minor traffic violation or nonviolent offense, he or she may be turned over to ICE. A detainer is not put on someone for the charge LVMPD arrests him or her for; it is put on because he or she is a priority for ICE due to a criminal history, gang affiliation or the number of times he or she has been deported.

To put things in perspective, in 2018, LVMPD had more than 67,000 jail bookings. About 10 percent of detainees were subject to the 287(g) program and an interview by an ICE agent. Of those detainees, 998 people—about 1 percent of our total jail population—were released to ICE custody.

SENATOR HARRIS:

The 998 people were from the total arrestees, not compared to how many were eligible to be turned over, right?

MR. CALLOWAY:

Yes, 67,112 were booked, and ICE took 998 people into custody.

SENATOR HARRIS:

What percent of people eligible to be turned over to ICE does that represent? That could be 100 percent of people lacking documentation that they should be in the Country.

MR. CALLAWAY:

Of the 67,112 people booked, 6,751 were subject to the 287(g) program. During the booking process, we learned they were not citizens and possibly in the Country illegally, so they talked to ICE officers who queried them through the 287(g) database. Of those 6,751 people, ICE decided to detain 998. The vast majority of people questioned by ICE are not detained.

SENATOR HARRIS:

Does the federal government reimburse State agencies for the time they detain suspects while waiting for ICE agents to pick them up?

MR. CALLAWAY:

County and municipal jails are eligible for State Criminal Alien Assistance Program grants to help detain people for violations of federal laws, including immigration violations. We do not hold anyone beyond 72 hours. Let us say you are booked on suspicion of domestic violence and a court date is set. If the judge says he or she will release you on your own recognizance but ICE wants you, ICE then has 72 hours to pick you up, or you walk out the door.

SENATOR HAMMOND:

If A.B. 376 had been in place over the past year, given the statistics that you just gave us, what would the data look like? What information would the public miss? Crossing the border illegally is a criminal offense but simply living here, minding your own business and obeying the laws is not. What will we miss from the data big picture if the bill is enacted?

MR. CALLAWAY:

The policy of the LVMPD is that officers are prohibited from asking people their country of origin or immigration status. That is the job of the federal government. However, the jail-based 287(g) program is intended for us to identify everyone in our custody, which is a Department of Homeland Security issue. Some countries, like China and Saudi Arabia, require mandatory notification if one of their citizens is arrested. Asking citizenship questions is vital for several reasons, of which immigration status is just a small component.

At LVMPD, we want to build public trust and encourage community members to come forward and report crimes. We have done a fantastic job with community engagement and do not want to tarnish that by doing field-based immigration enforcement. The fact is even if someone is arrested for jaywalking, if we determine he or she has a history of violent crimes, we want ICE to deport him or her because of the public safety risk. I think law-abiding illegal immigrants want the same thing: no gang members or criminal predators in their neighborhoods.

If LVMPD only reports what is required in [Exhibit C](#), the missing data would be critical. Let us say of the aforementioned 998 detainees, only 10 had no

criminal history, but ICE took them anyway. The missing data would be the other 988 people who had committed violent crimes that warranted being turned over to ICE.

SENATOR SCHEIBLE:

When you talk about "the data," all the data would include my blood pressure reading, the year this building was built, the atomic elements and everything else in the world. "The data" must have parameters, which A.B. 376 provides. If you want to change them, that is one thing; however, it is another thing to say we are missing data within those parameters.

I understand that you are asking us to expand the parameters because the bill seeks to understand who is being turned over to ICE without a violent conviction or arrest. Why do you want additional data? What is the purpose of knowing that of those 998 people, 988 of them had a violent conviction, except for LVMPD to pat itself on the back and say, "Look at us. We're doing such a great job turning over these bad, bad illegal immigrants" to the federal government?

MR. CALLAWAY:

I am not asking to expand the data. This amendment says, "No, no, no—let's take this and narrow it down to a tiny little sliver of the pie." I am saying we should report the whole pie. Why are we going to analyze a small amount of data that does not represent the entire picture? If we are going to look at the *Mona Lisa*, let us not just look at her nose; let us look at her whole face.

SENATOR SCHEIBLE:

What is the purpose of obtaining the rest of the data? What are you going to do with it?

MR. CALLAWAY:

We want to show the whole picture versus just the nose of the *Mona Lisa*. Senator Pickard wondered if A.B. 376 is a gotcha bill. Law enforcement deals with data like the 6,751 individuals subject to the LVMPD's 287(g) program. If we submit an annual report that says just three or four unfortunate folks were subject to ICE detention, that data will be used to make us look bad: "Oh, look, Metro, you've sent three people over to ICE that should never have been deported." Sheriff Lombardo said that his intent was if someone fell into that category, he or she would not be turned over to ICE. For all intents and

purposes, there would be no report of that occurring. If it does occur—someone slipped through the cracks, a policy was not followed—we address it. If the Legislature is going to make educated decisions, it needs look at the whole picture.

SENATOR HANSEN:

We collect data on gender, race, everything under the sun to prove things like systemic racism. However, A.B. 376 asks us to only report a tiny sliver of data and ignore what has already been collected. The bill sets up a new data system in which only misdemeanors are listed. What is the bill trying to capture that is not already collected?

MR. CALLAWAY:

[Exhibit C](#) actually prohibits LVMPD from reporting all of the data. That is concerning.

SENATOR HANSEN:

We try and expand the information in order to pinpoint specific problem areas. We have heard about a lack of confidence in law enforcement in certain legal and illegal immigrant communities. People worry police will ask about their immigration status. However, did you say LVMPD's official policy is not to ask that?

MR. CALLAWAY:

Yes. We have made great strides in trying to engage the Latino community. Our Sheriff's Hispanic Recruitment Council tries to recruit officers so we have more Spanish speakers. Our Hispanic Citizens' Police Academy is conducted in Spanish, and the Office of Community Engagement team works closely with the Latino community. That said, there must be a component whereby we identify exactly who is in our jail, including immigration statuses.

SENATOR HARRIS:

You mentioned that LVMPD might look bad if we only receive information on detainees with nonviolent offenses who should not have been turned over to ICE. Is that correct?

MR. CALLAWAY:

My concern is with people cherry-picking data and using it for their own agendas rather than getting all of the data and facts and looking at the whole picture.

SENATOR HARRIS:

Do you believe that picture would change if we knew you had sent nonviolent and violent offenders to ICE? Our concern is understanding how many times the system did not work. How is understanding that change the picture of how many times it did work? The number of times you were absent from or tardy to school does not change based on the number of times you were in school; the absenteeism is the crucial data. How will the other information change the picture on the data we are looking to get?

MR. CALLAWAY:

The picture will not change. If we are just looking at the *Mona Lisa's* nose, when we pan out and see the entire painting, now we know this is a portrait of a woman painted by Leonardo da Vinci. If LVMPD provides data to the Legislature, we want you to make educated decisions on that data as the basis for lawmaking. I want you to see the whole picture, not just the nose.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):

The Nevada Sheriffs' and Chiefs' Association opposes A.B. 376 with the proposed amendment, Exhibit C, because of how it limits the scope of the data. If we are statutorily required to report data, we want it to be broader in scope so we see the true picture of an individual, rather than just the probable cause of his or her most recent arrest.

Let us say Chuck O'Callaghan is here illegally. For years, he has raced his car through school zones, a violation that never arises to the felony level. He is arrested on the traffic offense—the most recent probable cause—and transferred to ICE. That is not what we are talking about. It discounts all of the prior history and reports that paint a picture of how Chuck O'Callaghan has consistently terrorized his community. Therefore, we cannot support section 1, subsection 2, paragraph (f) of Exhibit C.

SENATOR SCHEIBLE:

I repeat my question: what is the purpose of gathering the additional information except for law enforcers to pat themselves on the back for how many violent

criminals they send to ICE? The problem we are trying to address is the accidental referral of nonviolent offenders.

MR. SPRATLEY:

The point is not so we can pat ourselves on the back; it is to better see the entire picture. If there are changes that need to be made in other State jurisdictions that may be inappropriately transferring people, the Nevada Sheriffs' and Chiefs' Association wants to know about and change that. Sheriffs and police chiefs want to know that deputies follow procedures and that people are treated with respect and dignity. We also want to know that we are treating ICE issues with the respect they deserve and according to NRS.

MARY-SARAH KINNER (Washoe County Sheriff's Office):

The Washoe County Sheriff's Office shares other law enforcers' concerns about [Exhibit C](#) painting only one side of the canvas. When we go to create the parameters for this report, our records management systems will pull all of the charges associated with someone's booking. The system cannot pick and choose which crimes to report. If the bill is amended, we would have to add staff and take time and resources away from other important aspects of our mission.

JANINE HANSEN (State President, Nevada Families for Freedom):

Nevada Families for Freedom is concerned that [A.B. 376](#) contains an unfunded mandate. It is wrong to place a financial responsibility on local law enforcers that the State does not cover. To be truly transparent and truthful, you need all of the data, including on felony and violent misdemeanor convictions. The bill interferes with the cooperation between local law enforcement and ICE officers. The purpose of the report could intimidate law enforcers. The bill moves Nevada toward sanctuary state status.

MR. KAGAN:

The bill and [Exhibit C](#) will incorporate people's past arrest records, not just the most recent ones. Any felony would be the defining conviction. It is a state's right to decide to what degree to participate in ICE enforcement. Crossing the border illegally is a misdemeanor. Nevada does not have an international border so that is an irrelevant issue for us.

Immigration enforcement is entirely civil. Cases do not go to federal courts, and even when people are detained, that is not classified as punishment. If I am

pulled over for nonfunctional brake lights, the officer will not ask if I have filled out my 1040 tax form correctly. It is by no means the norm to mix civil and criminal enforcement.

In the past, ICE prioritized people with serious criminal records and there was less controversy about local police cooperation with ICE. However, in January 2017, ICE rescinded that priority. The biggest change in immigration enforcement inside the Nation and cities like Las Vegas and Reno is targeting immigrants who are long-standing residents who lack serious criminal records. That is why increased transparency is important. Broad cooperation with ICE has led to handing over people who were not priorities and did not pose a danger to the community.

MR. PADILLA:

Mr. Callaway stated that in 2018, 67,112 people were taken into custody by LVMPD; 10 percent of them were questioned by 287(g) agents, and 998 were detained by ICE. Did those 998 people actually commit a violent crime? Assembly Bill 376 will set the parameters mentioned by Senator Scheible. The data defined in section 1, subsection 2, paragraph (d) of the bill is nullified by the proposed amendment.

ASSEMBLYWOMAN TORRES:

The bill is simply to collect data and does not end 287(g) or other agreements between local law enforcers and ICE. As someone who works closely with the southern Nevada immigrant population and an educator who teaches many of them, I see a lack of understanding of how immigration policies work. When the data shows transparently that no individuals with minor offenses are detained by ICE, the long-broken trust between the police and community will start to mend.

Mr. Callaway talked about cherry-picking data and the analogy of only seeing Mona Lisa's nose. Assembly Bill 376 is the *Mona Lisa*, not just her nose. Mr. Callaway and Mr. Spratley are asking us to look at da Vinci's *The Last Supper* and *Vitruvian Man*, but that is not the intent of the bill. We are looking for a specific subset of data that allows us to get accurate information about a specific community problem.

CHAIR CANNIZZARO:

We will close the hearing on A.B. 376 and open the hearing on A.B. 431.

ASSEMBLY BILL 431 (1st Reprint): Revises provisions relating to the right to vote for a convicted person. (BDR 14-981)

ASSEMBLYMAN JASON FRIERSON (Assembly District No. 8):

Under the Nevada Constitution, a person convicted of a felony is not allowed to vote unless his or her civil rights are restored. He or she cannot serve on juries or run for public office. Voting may be the most fundamental of our civil rights, our chance to have direct input on policy direction of our governments. To better reintegrate into society, a prisoner must be allowed to have his or her voice heard. Prior transgressions of the law are dealt with through the courts, and once sentences have been served, voting rights must be restored.

According to The Sentencing Project, Nevada is one of the 12 most restrictive states in restoring voting rights even after sentences are served and people are no longer under parole or probation supervision. The Legislature passed A.B. No. 181 of the 79th Session, which narrowed the exceptions to eligibility for immediate civil jury service and restoration of voting rights once sentences are completed. Assembly Bill 431 fills the remaining gaps that prevent voting after the societal debt is paid.

There is a notion that the court system has a set of punishments for crimes and once you have been deemed to no longer be a risk to the public, you are expected to live by societal norms. If you are expected to honor traffic rules, pay taxes and work, you should be allowed to participate civically. What better carrot would there be for someone to stick to societal norms than having a say in the electoral process?

I have participated in Hope for Prisoners, whereby people integrating back into society go through a yearlong program. Whenever I bring up the voting issue, graduates tell me how proud they are to take their kids with them to do things freedom allows. What better way to increase people's cherishing and valuing of freedom than letting them vote in front of their children? It will decrease recidivism and increase public safety. Let us give people a voice in the policies that held them accountable and ensure that they stick with societal norms.

Assembly Bill 431 provides that if someone is off probation and parole, he or she is allowed to vote. If you are in custody, you may register to vote and, once released, you can renew the registration.

ANNETTE MAGNUS (Executive Director, Battle Born Progress):

Battle Born Progress supports A.B. 431. Over the past few years, leaders of both parties at all levels of government have come to a consensus regarding our criminal justice system. It is an affront to our Country's morality and ongoing human rights crisis that imperils the health and wellbeing of our community. To deny formerly incarcerated Americans the right to vote is to continue to restrict their freedom and deny their humanity. It is an extension of punishment past the point at which they have served their time and rejoined society.

Restoration of voting rights to felons is a key part of equality under the law. Sixty-three percent of Americans, including 62 percent of Republicans, say that felons should have their voting rights restored after completing their sentences. This is a nonnegotiable matter of democracy.

MS. WELBORN:

More than 6 million Americans—89,267 of whom live in Nevada—are disenfranchised due to felony convictions. Every Friday, the ACLUN staff attorney facilitates a voting rights restoration training class at the Legal Aid Center of Southern Nevada office. For those ineligible for automatic restoration, the process is daunting, cumbersome and illusory. There is nothing in NRS that tells people how to petition the court or guides courts as to what process to follow when restoring voting rights. A 2010 study estimated that from 1990 to 2011, less than 0.5 percent of ex-felons had their voting rights restored via court order.

Once a person regains freedom of mobility, there is no reason to deny him or her the right to vote. Our democracy is strengthened by increasing voter participation and helping people complete their transition back to society. Much evidence indicates enfranchised felons contribute more to their communities than do those denied the right to vote. Research shows a link between voting participation and recidivism. Voters were half as likely to be rearrested as were nonvoters; 27 percent of nonvoters were rearrested, compared to 12 percent of voters.

EMILY PERSAUD-ZAMORA (Executive Director, Silver State Voices):

Silver State Voices is as an organizing table of 501(c)(3) organizations conducting civic engagement work throughout the State, including leading the voting rights coalition Let Nevadans Vote. The coalition supports A.B. 431 ([Exhibit D](#)).

Under NRS, tens of thousands of Nevada citizens—people who have successfully completed their sentences and are living, working and paying taxes in their communities—are prevented from voting due to past felony convictions. Nevada has the ninth highest disenfranchisement rate in the Country.

As of 2016, nearly 90,000 Nevadans are prohibited from voting due to felony convictions. That is more than 4 percent of the total voting age population; the percentage of the population banned from voting in Nevada is 60 percent higher than the national average. As of 2016, Nevada was 1 of 9 states with a disenfranchisement rate over 4 percent. The problem is only getting worse: the number of Nevadans who cannot vote has doubled since 1980, when it was less than 2 percent.

In 2018, Let Nevadans Vote members collectively registered more than 127,000 voters. The second-highest reason why people would not register to vote is because they were formerly incarcerated. Numerous canvassers talked to individuals who qualified to vote but did not know the current process to restore their rights. Assembly Bill 431 will minimize confusion about which formerly incarcerated people are able to vote and will simplify the work of the election administration.

LEONARD P. JACKSON, Reverend (Executive Director, Faith Organizing Alliance):
The Faith Organizing Alliance is a faith-based organization with more than 15 similar organizations working with us. Disenfranchisement disproportionately impacts people of color because we make up the majority of those incarcerated. However, people of color do not commit the majority of crimes in Nevada. If we want to secure our future, we must allow people who have completed their sentences, probation and parole to become full citizens by voting.

KEVIN WONG:

I am a junior at UNLV studying political science, a policy debater on the UNLV debate team and a convicted felon. I was released from State prison on November 7, 2016—the day before the presidential election—and discovered I was disenfranchised. My voice no longer mattered, and I lacked the agency to choose my elected officials. What precedence does this set for us as felons and citizens? Does it say we are second class and our votes do not count?

I am pleading on behalf of my fellow felons for an avenue conducive to reintegration into society. By allowing felons greater agency to become more

involved in their communities, A.B. 431 will increase our investment in positive civic engagement, therefore reducing recidivism. The bill removes the veil concealing mass incarceration and the racial and economic disparities within our fractured criminal justice system.

Do not be afraid of enfranchising felons because we cannot fear democracy. People are imperfect, and sometimes our flaws result in incarceration. Some of us who are lucky enough reintegrate into society but continue to struggle with recidivism; others attain more fortunate circumstances. Regardless of the decisions we make after coming home, we share a singular struggle rooted in the other prejudices we face while trying to reintegrate: policies about what we can and cannot do, where we can and cannot work, and whether or not we deserve to be heard on Election Day.

It is never too late to become the person you might have been—words I have written on every cell I have slept in. How can felon citizens make these words a reality if the status quo continues to disenfranchise us? It is not by the fault of our humanity that we should be denied release into an inclusive state in which we are not afforded the agency to engage in democracy. We should be reminded we are still citizens of Nevada.

MS. CASTRO:

The case of Dr. Sandra Little was mentioned during testimony on A.B. No. 181 of the 79th Session. In 2013, Dr. Little was sentenced to 33 months in federal prison and 2 years of supervision. Two years later, she regained her right to vote. She asked me to tell the Committee what that meant to her:

For me, voting has always been my duty. As a young girl, I watched my grandfather get dressed in his Sunday clothes to go to the polls. He would remind us that blood was shed for this day, and it would be a disgrace to not vote. Voting day for me is not a choice; it is a revolutionary act. No matter the outcome, I can use my voice to advocate for my own liberation. I will always equate my right to vote with being free. Votes are essential for my sovereign soul.

For Dr. Little and many others, please support A.B. 431.

QUENTIN SAVVOIR (Political Director, Make It Work Nevada):

When A.B. 431 was introduced, testimony included the story of Joseph Abraham, who felt that when his voting rights were restored, it was a crucial component in his feeling of being fully reacquainted into society. Folks need to be made whole again after they have paid their debts to society. Nevada is 1 of 9 states where black voters are disenfranchised at least 10 percent compared to other groups. The State is uniquely positioned to make sure that is a thing of the past. We can do better.

MS. BERTSCHY:

The Office of the Public Defender, Washoe County, and Mr. Piro of the Office of the Public Defender, Clark County, support A.B. 431. The right to vote makes all other rights meaningless. The bill may offer a policy to reduce recidivism for those who have completed their sentences and probation or parole.

BILL STANLEY (Southern Nevada Building Trades Union):

The Southern Nevada Building Trades Union works with the Department of Corrections in our Re-entry Vision program at High Desert State Prison. We work to ensure that people who complete our program have an opportunity to work. We have placed people in our apprenticeship program from High Desert. When we gainfully employ individuals who were in our Re-entry program, they are less likely to reoffend. In fact, no one who has graduated from it and reentered the workforce has ever had contact with law enforcement. That is the goal to which we should adhere. The people who testified on Senate Bill 207 were those who have helped us to understand their role in society.

SENATE BILL 207 (1st Reprint): Revises provisions governing apprentices.
(BDR 28-740)

Assembly Bill 431 is the legitimate next step.

Last week, I talked to the wardens of High Desert and the Southern Desert Correctional Center about recidivism. Forty-seven percent of inmates at the two institutions are parole violators. Addressing that issue is paramount to give people a fair shot at reintegration.

JAGADA CHAMBERS:

I returned home from prison on August 1, 2004. More than 80 percent of young black males between the ages of 18 and 35 return to prison within 36 months.

Two realities for me in avoiding recidivism were finding gainful employment and becoming wholeheartedly invested in my community. I have helped people cast their votes from behind bars in pretrial status. In those jails, I saw the expression on people's faces when they realized they could vote.

Voting is the biggest tool to avoid recidivism. If you can invest in your community and support that by casting a vote, that is the voice of the people. In November 2018, I campaigned for Assemblyman Tyrone Thompson with my son and then worked at a polling station. Casting that vote gave me confidence and instilled in my son he has a civil engagement at the age of 8. That voice is also critical for public safety when prisoners can come home and invest in their communities.

MR. HOFFMAN:

I mostly do appeals and habeas petitions, talking to felons who are the subject of A.B. 431. Prisoners do not have much to do all day but read the news and about politics. They are politically engaged and informed at a rate higher than the general population. We have a national problem with low voter turnout and citizens not being paying attention to the news. The bill is not just about helping felons; it is about improving the quality of our democracy for everyone.

MR. McDONALD:

I was incarcerated for eight months as a political prisoner. Our criminal justice system is entirely despotic. The majority of people within it were wrongfully convicted and opt for a plea deal and lose their right to vote. The U.S. Constitution abolished slavery, yet if someone is convicted or even accused, he or she is now enslaved. Restoring the voting right gives people a voice to help change the system.

Many people say, "It is what it is. When they lose their right to vote, they really do have no skin in the game anymore." When felons can vote in the right people who will help change the system, that affects all of our mass incarcerated. The Founding Fathers founded this Country on principles of freedom and liberty. When liberty is at stake, that imposes a profound devastation on so many inmates.

The majority of people are good but sometimes make mistakes. As Legislators, just touring jails and prisons is not enough to truly witness the tyranny of the

system and the deprivation of afforded rights. That is one of the biggest social issues of our time.

OTISTINE BROWN:

I am a retired Clark County teacher who works with the Faith Organizing Alliance. I phone people to encourage them to vote. The people who are most disenfranchised have been in jail. I encourage them that they will eventually have the right to vote. Assembly Bill 431 is essential because of how important it is that people have the right to proudly go to the polls.

ZACHARY KENNEY-SONTIWAN (Mass Liberation Project):

I canvassed countless hours for voter registration during the 2016 election cycle. It can be quite difficult to get people involved by voting. I am always excited to meet someone who actually wants to register but cannot. I was surprised at how many people said, "I don't want to register to vote because I have a felony conviction on my record. I don't know what the rules are. I don't want to get into trouble." Our democratic institutions are why we are proud to be here, a reason we view this Nation as a world leader. Increasing access to and embracing those institutions should be our top priority. Our criminal justice system is extremely flawed and not a determinant if you are a good person who deserves the right to vote, especially given the disproportionate impact of disenfranchisement on people of color.

SENATOR HANSEN:

Under NRS, Category C, D and E felons' voting rights are automatically restored after completion of parole or probation. Violent Category A and B felons must wait two years to apply for restoration of voting rights after completion of parole and probation. Is that correct?

MR. ANTHONY:

Yes, people convicted of Category A and certain Category B felonies must petition the court to vote.

SENATOR HANSEN:

My impression is some people believe all felons have to apply to vote, but that is not the case.

MR. ANTHONY:

That is correct. Sometimes it is automatic.

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CHAIR CANNIZZARO:

We will close the hearing on A.B. 431. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 10:11 a.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	9		Attendance Roster
A.B. 376	C	2	Assemblywoman Selena Torres	Proposed Amendment
A.B. 431	D	2	Let Nevadans Vote	Testimony in Support