MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eightieth Session
April 3, 2019

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:10 a.m. on Wednesday, April 3, 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:

Senator David R. Parks, Senatorial District No. 7
Senator Heidi Seevers Gansert, Senatorial District No. 15
Senator Joyce Woodhouse, Senatorial District No. 5

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Andrea Franko, Committee Secretary

OTHERS PRESENT:

Mike Schneider
Michael Brown, Director, Department of Business and Industry
Sharath Chandra, Administrator, Real Estate Division, Department of Business and Industry

Garrett Gordon, CAI Nevada; Southern Highlands Homeowners Association
Michael Kosor
Tonja Brown, Advocate for the Innocent
Jennifer Noble, Nevada District Attorneys Association
Ashley Gordon Hanks, Assistant City Attorney, City of Henderson
Brian O'Callaghan, Las Vegas Metropolitan Police Department
Shirle T. Eiting, Chief Assistant City Attorney, City of Sparks
Shani Coleman, City of Las Vegas
Bob Heany, Crisis Support Services of Nevada
Rachelle Pellissier, Executive Director, Crisis Support Services of Nevada
Sarah Adler, Nevada Coalition to End Domestic and Sexual Violence
Bill Bradley, Nevada Justice Association
Dan Musgrove, Nevada Healthcare Reform Coalition
Catherine O'Mara, Nevada State Medical Association

VICE CHAIR HARRIS:
I will open the Senate Committee on Judiciary with Senate Bill 392.

SENATE BILL 392: Transfers the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels from the Real Estate Division of the Department of Business and Industry to the Office of the Attorney General. (BDR 18-1044)

SENATOR JOYCE WOODHOUSE (Senatorial District No. 5):
I have submitted a conceptual amendment (Exhibit C), and it is a complete replacement of the bill. Originally, S.B. 392 proposed moving the Office of the Ombudsman from the Department of Business and Industry to the Office of the Attorney General (AG). The reason was simple because virtually all the questions the Ombudsman deals with end up as legal matters. It made sense to me that the Ombudsman be housed in the AG's Office where he or she would have access to the appropriate legal resources. However, over the years the AG's have consistently opposed making the move on a variety of grounds.

In consultation with the Department of Business and Industry, we developed a new set of recommendations that will allow the Ombudsman to remain at the Department of Business and Industry while also providing enhanced assistance from the Attorney General's Office along with other improvements to provide the Ombudsman with the necessary tools and resources to do the job. The provisions of the new bill will do the following: add an attorney position in the

Ombudsman's Office to provide legal guidance or specialize in fraud and fiscal malfeasance to the Commission for Common-Interest Communities and Condominium Hotels (CCICCH). It will add an auditor or a certified public accountant to increase the number of fiscal audits and review of reserve studies. It will also direct that a memorandum of understanding be entered into between the Ombudsman and the Attorney General's Office to provide a designated deputy attorney general to whom the Ombudsman can refer cases for criminal prosecution. It will establish a joint task force with the Attorney General's Office to identify areas of concern in common-interest communities and recommend regulations to the Commission and/or the Legislature. The Ombudsman will have access to books and records of common-interest communities and will equalize the compensation of Ombudsman with similar positions in the department.

MIKE SCHNEIDER:
In the Sixty-ninth Legislative Session, we worked on a homeowners' association (HOA) bill. We located the Ombudsman position in the Real Estate Division of the Department of Business and Industry. We were overrun with fraud in the HOAs. Some attorneys were stealing money from the HOAs in the form of construction defect lawsuits.

I talked to people who needed assistance. The Ombudsman's Office could not help, the District Attorney's Office did not have jurisdiction and the Attorney General's Office said it was not their area. I started referring people to the FBI and, finally, the FBI interceded. Homeowners' associations are governments with the power to tax and foreclose on property. The FBI's first charge is government corruption. It allowed them to investigate the HOAs.

MICHAEL BROWN (Director, Department of Business and Industry):
The first letters I received, after accepting this position, were from HOAs across the State. Since consumer affairs is the jurisdiction of the Department of Business and Industry, I talked to our professional staff to see what could be done.

We are trying to ensure the Ombudsman has the authority needed. The Department of Business and Industry is the regulator of capital, commerce and transportation in the State. The bill will assist our regulators to perform their jobs.

SENATOR HANSEN:
Are we giving the Department of Business and Industry enough resources?

MR. SCHNEIDER:
The HOAs are funded by the yearly door fee. Hundreds of thousands of dollars a year are generated. We have the funding, but we need a position to control the issues.

SENATOR HANSEN:
Is one deputy attorney general adequate? Are there over 3,000 HOAs in Nevada?

MR. SCHNEIDER:
We would come back next Session with recommendations after Mr. Brown makes recommendations.

MR. BROWN:
Rather than transferring the position, we will be strengthening the Department of Business and Industry and building a relationship with the Attorney General. I met with the Bureau of Consumer Protection staff. We have a reasonably successful regulatory program. The position is more for the cases requiring a lawyer rather than an ombudsman.

SHARATH CHANDRA (Administrator, Real Estate Division, Department of Business and Industry):
The door fee is $4.25. We have sufficient resources. We have licensees who are community managers, but we also oversee the HOA boards. Since most are volunteers, one of the largest components we have identified is education. Understanding *Nevada Revised Statutes* (NRS) 116 and 116A gives board members the tools they need to run a successful board meeting.

We have a seven-member board, the CCICCH overseeing HOAs. We process cases the Commission hears. *Nevada Revised Statutes* 116A speaks to what the HOA boards can and cannot do. We want to encourage and educate board members to understand the law. Those cases that are more delicate go to the Commission. Complaints fall into three categories: mediation, informal conferencing and investigations. The investigations go to the Commission for discipline.

In fiscal year 2019, 140 cases were opened, and we have 122 active cases.

We want to concentrate on the financials. We can catch errors, initiate corrective actions and resolve the issues before escalation.

SENATOR PICKARD:
What is the purpose of the task force? Is it in the auditing capacity, or are we looking for qualified people to sit on HOA boards?

MR. BROWN:
Instead of transferring the Ombudsman position out of the Department, we are looking for ways to strengthen our existing authority and capacity. I would like to take a look at the whole picture and come back next Session with suggestions on modernization.

MR. CHANDRA:
The task force is to bring members from the Attorney General's Office and the Real Estate Division together. We will take a broader look at what we are doing. These are preemptive measures utilizing the Attorney General's expertise. The AG's Office sees issues we do not. We keep the communication open in order to understand the issues from the AG's prospective. The task force is still conceptual, and we are open to recommendations.

SENATOR PICKARD:
A difficulty we are facing is common-interest communities are a creation of contract and deed restrictions. If we are modifying or looking to see if it is a reasonable restriction, we would need to drastically revise the law.

MR. BROWN:
We would not be looking at that section of the law. The idea is to take a management look at how we are doing.

SENATOR DONDERO LOOP:
How many cases are in the same HOA?

MR. CHANDRA:
The complaints are more with NRS 116 and 116A. There is not one HOA causing a lot of complaints.

SENATOR DONDERO LOOP:
How long will it take you to clean up the caseload? What is the process?

MR. CHANDRA:
The idea is to strengthen what we have. We will increase the focus in certain areas, whether it is cases, mediation or informal conferencing. It is a day-to-day operation. We want to strengthen areas such as fiscal audits. If there is criminal intent, we will send cases to the AG's Office; if not, they go to the Commission.

GARRETT GORDON (CAI Nevada; Southern Highlands Homeowners Association)
We support S.B. 392. We have a friendly amendment.

SENATOR SCHEIBLE:
Is this a written or conceptual amendment?

MR. GORDON:
It is conceptual.

MICHAEL KOSOR:
I have submitted testimony and supporting documents (Exhibit D) opposing S.B. 392. I have submitted a proposed amendment (Exhibit E).

MR. SCHNEIDER:
Originally, we had an education portion in order to educate the HOA boards. We also licensed the community association managers.

MR. BROWN:
We have literature and outreach programs. We are trying to manage what we have better. We do not want to reopen our governing law on HOAs.

CHAIR CANNIZZARO:
We close the hearing on S.B. 392 and open the hearing on S.B. 384.

SENATE BILL 384: Revises provisions relating to criminal procedure. (BDR 14-857)

SENATOR DAVID R. PARKS (Senatorial District No. 7):
Senate Bill 384 addresses the issue of exoneration of individuals wrongfully convicted, modeled after the Innocence Project. The goal of the public integrity unit commission is to establish a process to free and exonerate innocent people who are incarcerated or paroled and make reforms to the criminal justice system responsible for their wrongful imprisonment. I spoke to Attorney General Aaron Ford, and he had concerns with sections 16, 17 and 18. He indicated, however, he was impressed with the Victim Integrity Unit in the Clark County District Attorney's Office.

TONJA BROWN (Advocate for the Innocent):
In 2011, our attorney filed a petition for exoneration on behalf of Nolan Klein. The Nevada Supreme Court Justices upheld the lower court's decision to deny because they lacked jurisdiction. There were no laws in place to grant exonerations posthumously. We are here to allow persons who have maintained their innocence a chance to have a petition for exoneration posthumously granted.

I am submitting a petition for exoneration (Exhibit F), (Exhibit G) and a proposed amendment (Exhibit H).

I have also provided you with supporting documents, including Ron Rachow's handwritten notes (Exhibit I).

I filed a writ of mandamus in 2010 (Exhibit J).

Please see the Petition for Exoneration and Order Dismissing Appeal (Exhibit K) and communication to Jennifer Noble (Exhibit L).

The Washoe County District Attorney's Office has a fiscal impact statement of $2 million (Exhibit M). Where does the $2 million come from since we are asking to delete section 18, subsection 1, paragraphs (b) and (d)? We are also planning on deleting anything dealing with gross misdemeanor convictions.

CHAIR CANNIZZARO:
Are you taking out anything dealing with gross misdemeanor convictions?

MS. BROWN:
Yes.

CHAIR CANNIZZARO:
Are you creating a completely different postconviction process for felonies versus gross misdemeanors?

MS. BROWN:
The public integrity unit commission will only look at felonies.

Clark County Office of the District Attorney has a fiscal impact of $2,725,885 a year (Exhibit N).

The proposed commission would study the 13 wrongful convictions in Nevada, review claims of innocence and examine State policies in order to prevent wrongful convictions in the future.

SENATOR OHRENSCHALL:
Would S.B. 384 have provisions for people exonerated after serving decades in prison receiving compensation?

MS. BROWN:
Yes. There could be compensation up to $100,000 per year of imprisonment. Last week, Assemblyman Steve Yeager submitted a compensation bill for those wrongfully convicted, Assembly Bill (A.B.) 267.

ASSEMBLY BILL 267: Provides compensation to certain persons who were wrongfully convicted. (BDR 3-6577)

SENATOR PICKARD:
Section 4, subsection 3 reads, "prosecuting attorney has an affirmative obligation to seek out and disclose to the defendant any and all material which tends to exculpate or mitigate the culpability of the defendant." This is the job of the defense counsel. If the prosecutor discovers exculpatory information during the process of the investigation, the prosecutor is required to turn it over. Are we expanding the duties of the prosecuting attorney to handle both the prosecution and the defense?

MS. BROWN:
Normally the prosecution turns over all the evidence. If prosecutors do not, it is a Brady violation under *Brady v. Maryland*, 373 U.S. 83 (1963). In our case, the

prosecuting attorney chose not to turn over the exculpatory information, and it was not discovered for 21 years.

SENATOR SCHEIBLE:
In what section does the bill address posthumous complaints?

MS. BROWN:
Section 11, subsection 5 addresses "a person who is deceased."

SENATOR SCHEIBLE:
In section 11, subsection 5, it looks like a representative would have had to have a determination on the merits that vacated or reversed the conviction. Section 11, subsection 1, states someone else can file a petition. Which of these provisions apply to people on behalf of a deceased defendant?

MS. BROWN:
A petition for exoneration was posthumous because he was dead for two years. When he passed away, he had litigation pending.

NICOLAS ANTHONY (Committee Counsel):
The intent of the bill is in sections 11 through 15. A person convicted of a felony or a representative acting on behalf of a person convicted of a felony who has since died can bring forward an action for a petition for a hearing to determine innocence. The bill lays out the procedural process as well as the compensation of $100,000 per year of imprisonment if you were to succeed on such a petition.

JENNIFER NOBLE (Nevada District Attorneys Association):
We are in opposition of S.B. 384. The Nevada Supreme Court rejected all the claims referenced during Ms. Brown's testimony in 1989, 1993, 1998, 2002, 2009 and 2011.

We have concerns with section 3, which addresses discovery and the assumption that the prosecution is in constructive possession of all materials created, generated or collected by any and all law enforcement agencies without limitation. Ms. Brown represented in her testimony that this is merely a *Brady v. Maryland* violation. It is not. The materiality requirement of *Brady v. Maryland* is completely removed from this bill, and it is critical to the function of the criminal justice process. As written, the bill will have unintended

consequences that defense attorneys, victims and proponents would not want. The bill is requiring us to cast a wide net in terms of trying to collect any exculpatory or mitigating information in the case. The same section relieves the defense of any burden to request specific information. This will result in more documents discovered and copied.

We would need to contact every criminal and law enforcement agency, including the FBI, IRS and Immigration and Customs Enforcement. In addition to being an impossible task, this is going to chill the willingness of undocumented witnesses to report crime. It is not the intent of the bill, but it is the reality when we have a requirement exceeding our constitutional obligation. It will not only cost extra resources for prosecutors' offices but for law enforcement as well. They will have to assist in gathering this information, discover it and copy every fax cover sheet and notation.

We are looking for evidence that is material and exculpatory to the defendant. Material evidence is defined by the United States Supreme Court as evidence which in the eyes of a neutral observer could alter the outcome of a proceeding. Section 4, subsection 1, paragraph (d) throws out that touchstone requirement.

Section 4, subsection 3 relieves the defense of any obligation to request information in order to support its defense. This is a problem—I do not know the defense attorney's strategy at trial or sentencing. We will be required to gain access to the defendant's private mental health records. Section 4 is in direct conflict with a recent unpublished decision of the Nevada Supreme Court in *McMurry v. State*, No. 72805, 2019 WL 959868 (Nev. Feb. 22, 2019).

There is an obligation to turn over exculpatory material and impeachment evidence. However, the defense also has an obligation to make specific requests if there is something the attorneys need for their case that has not been provided. This section invites error because it makes us guess what the defense is going to be. This is not a level playing field.

Sections 8 through 15 pertain to innocence or factual innocence. I sit on the Washoe County District Attorney's conviction integrity committee. The existing structure under NRS 34 provides a petitioner with adequate opportunity to bring newly discovered evidence demonstrating factual innocence before our courts. We have been working hard with Assemblyman William McCurdy on a bill containing similar language to this bill.

We need to proceed with caution if we are going to create a freestanding claim of factual innocence. Unless we create a standard, there will be no time for the conviction integrity committee or Clark County's victim integrity unit to review everything. Newly discovered evidence or "relative and scientific" evidence does not require the court to consider materiality. Is this material to the defendant's guilt or innocence or is it legally relevant or arguably relevant? It also removes our *Brady v. Maryland* obligations. *Brady v. Maryland* is a postconviction remedy. Materiality is an important part of deciding whether a person has a constitutional deprivation.

We would like to exclude from section 10, in the definition of forensic scientific evidence, opinions of psychological and psychiatric experts because the opinions vary widely. They will pertain to legal innocence whether the person had the capacity to form the intent of the crime; not whether the person committed the factual basis for the crime. There is no requirement in this section where the petitioner acts with reasonable diligence once the claim becomes available. For example, if you learn of potential DNA evidence or other exculpatory evidence that demonstrates your innocence or you believe it does, you should not be permitted to withhold it for five years. It creates prejudice to you and to the State.

A provision ensures the petitioner focuses on newly discovered evidence and its impact on the case, not collateral issues already litigated or irrelevant to the court's inquiry. In this area of law, we see petitions both from proper persons and attorneys who are attempting to relitigate. By requiring focus for these petitions, it allows us to identify those that are righteous.

We would like to create a meaningful screening process for the courts before we are ordered to respond. We find even where a petition is procedurally barred, we are getting orders to respond. Justice James W. Hardesty recognized it is a problem during a meeting of the Advisory Commission on the Administration of Justice. If we do not create a process requiring the court to conduct a meaningful review and tell us what it wants before it orders us to respond, it will cause righteous claims or potentially valid claims to get lost in the shuffle. When I talked to prosecutors in Utah and Wyoming, they tell me the No. 1 problem is the lack of a meaningful screening process.

The proposed commission in section 16 has to do with postconviction remedies, laws and themes of innocence, but there is not one prosecutor on the

commission. There is no requirement of a practitioner in the area of postconviction and appellate law on the commission. There is subpoena power, but what it is for? Section 16 has the power to request a warrant for someone's arrest for a violation of any portion of the NRS. This is too broad; it is creating a law enforcement agency.

SENATOR SCHEIBLE:
You talked about the timely and focused use of new information. I am concerned that there is not any protection to prevent people from changing their theory of defense. This allows somebody who throughout the trial insisted on having an alibi and appealed on the basis of an alibi to get DNA testing. Then the person says the reason you need to turn over my conviction is because the DNA does not match. I was not actually with anyone else and do not have an alibi, but the DNA proves I am innocent—even though the defendant never asked for a DNA test in the past, never suggested the DNA would not match, and waited until the DNA came back and did not match, having gambled on whether the result would be favorable. Is this a concern about the legislation?

MS. NOBLE:
There is no protection. Suppose that claim was not raised earlier because of ineffective assistance of counsel. We already have a procedural vehicle to get relief from an ineffective attorney. We have a constitutional deprivation claim pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984) that fits within NRS 34 for a postconviction petition for writ of habeas corpus.

SENATOR SCHEIBLE:
Is there a difference between handing over discovery at the initiation of a case versus handing over discovery in preparation for trial?

MS. NOBLE:
There are practical problems with imposing a fast time limit on when we turn in our evidence. We may have multiple agencies involved. We must request the information and wait for its return. We must discover it through our discovery process. There was discussion of ten days. In a lot of cases, the investigation lasts longer, information continues to come in and we need to continue to discover it. If you get information from law enforcement or anyone else with information you did not have earlier, you must turn it over. It is impeachment material under *Giglio v. United States*, 405 U.S. 150 (1972), and we must turn it over. The discovery remedies we know in terms of timing—the courts can

continue the case if the defense attorney needs more time to investigate, we did not turn it over because of our own negligence or wrongful conduct or the case can be dismissed. There are remedies in place that police us as prosecutors. At a certain point, criminal litigation must come to an end. Victims deserve an end to the process.

SENATOR SCHEIBLE:
Do cases resolve while waiting for a response?

MS. NOBLE:
Yes, while we are in negotiations. If we are in possession of mitigation material for the sentencing, we are obligated to turn it over to the defense attorney, even if the defense is pleading the case.

ASHLEY GORDON HANKS (Assistant City Attorney, City of Henderson):
Our input on the bill is limited to the sections 3 and 4. In *Kyles v. Whitley*, 514 U.S. 419 (1995), the U.S. Supreme Court determined that, constitutionally, we as prosecutors only have to disclose what we can see, or the investigating law enforcement agency has access or knowledge material to the case. Section 3 of the bill states the prosecuting attorneys would be deemed to be in possession of all materials created, generated or collected by any and all law enforcement agencies with no limitation on region, county, country or language spoken. It gives a duty over information records that we have no access to or any reason to have knowledge of. In section 4, we have been given the duty to turn over any material in the possession of any law enforcement agency which tends to exculpate or mitigate culpability or adversely impact the credibility of a prospective State or city witness or any evidence or mitigate potential punishment. Potentially, this is a huge body of information. We cannot comply with these regulations.

The new duty to disclose all exculpatory material whether requested or not is a different duty than we have now and would be expensive for the State.

The City of Henderson has the same concerns as Senator Pickard regarding section 4, subsection 3. We ask the changes in sections 3 and 4 be removed.

BRIAN O'CALLAGHAN (Las Vegas Metropolitan Police Department):
We are in opposition of the bill.

SHIRLE T. EITING (Chief Assistant City Attorney, City of Sparks):
I am echoing the concerns of previous testifiers in opposition to the bill. Our office prosecutes about 1,200 cases a year. In section 4, subsection 3, adding "affirmative obligation to seek out and disclose" information may start waiving our prosecutorial immunity when we become involved with a case. We potentially become a witness.

SHANI COLEMAN (City of Las Vegas):
We have concerns with sections 3 and 4 also. We echo the remarks of previous testifiers and oppose the bill.

MS. BROWN:
The bill is primarily a petition for exoneration. Prosecutors would supply evidence provided during the trial. It is online.

The proposed commission would look at wrongful convictions and those prosecuted, such as the 13 cases exonerated in Nevada. Members could be added to the commission.

CHAIR CANNIZZARO:
We will close the hearing on S.B. 384 and open the hearing on S.B. 282.

SENATE BILL 282: Limiting the civil liability of crisis support centers under certain circumstances. (BDR 3-614)

SENATOR HEIDI SEEVERS GANSERT (Senatorial District No. 15):
I knew about the Crisis Support Services of Nevada long ago. I did not understand the breadth of work and impact it has. I have been to the group's annual event for several years and been impressed. The bill is narrowly written and is about civil immunity, but section 3 points out this act does not apply to any actions arising from any injury or damage specified before July 1, 2019. This is an important section of this bill. We are moving forward, not looking back as far as immunity is concerned.

BOB HEANY (Crisis Support Services of Nevada):
The Crisis Call Center offers help with suicide prevention, substance abuse, opioid abuse, child abuse and neglect, elder abuse and neglect, sexual assault, community and youth outreach, including problems with school bullying and

violence prevention. The Center is open 24 hours a day, 7 days a week, 365 days a year.

The Center began in 1966 as an outreach program of the University of Nevada in response to Nevada's high rate of suicide. Every year, our call volume increases. We are the only crisis call center in the State providing free help to people in crisis. We became a nonprofit corporation in 1985. We are annually accredited by the American Association of Suicidology. The paid and volunteer staff receive extensive training of up to 73 hours before they handle calls. The mission is to provide free confidential and caring support for people in crisis. The number of people in crisis is staggering.

The catalyst for this bill is a wrongful death lawsuit filed in March and pending in the Washoe County District Court. The suit filed is about a 16-year-old-boy living with his parents in Maine. He contacted the Center by text message in January 2017, stating he was contemplating suicide. Two trained staff members assessed the risk involved, went through the protocol and tried to get assurance that the young man was not in imminent risk of committing suicide. He acknowledged he was fine. Seven weeks later, we learned he committed suicide. The parents alleged that the Center was negligent based upon the failure to follow up with their son who again contacted us by way of text message using a cell phone having an Oregon number. The second allegation concerns the failure to notify the parents. All calls and contacts are confidential, particularly from minors as they may not contact us if they thought their parents knew.

We have compassion for the parents who lost their son, but we strongly believe the Center was not at fault and should not have been sued. Our fear is this lawsuit. If it goes to trial and there is a plaintiff's verdict for the parents, other lawsuits that follow. The impact of the lawsuit as a practical matter has taken many hours from our paid staff instead of answering crisis calls. The burden has been extensive to our Executive Director. An adverse effect on staff and volunteers of our organization affects morale, hiring and retention of staff. It has had a chilling effect on carrying out the mission that we have to help people in crisis. If these lawsuits continue and there is not some form of immunity, the people working for us are going to be nervous when taking calls—particularly with suicide calls and text messages coming in from teenagers. We are worried a bad precedent as a result of an adverse judgment could affect our attempts to

gain funding. We are grant- and charitable-funded. We barely get by with the funding we receive.

Senate Bill 282 is not unique. Alabama, Arkansas, Georgia, Maine, Maryland, Virginia, New Jersey, Utah and Wyoming have some type of civil immunity for nonprofits. The bill provides limited immunity based on negligence, not blanketed immunity. There is an exception for liability for willful, wanton or gross negligence. It is common in these immunity bills and narrow in scope.

In the Seventy-ninth Session, Nevada lawmakers enacted two bills that resulted in NRS 41.491 and 41.519. The bills limit civil liability for persons and organizations that donate and distribute food and liability related to an equine activity.

ROCHELLE PELLISSIER (Executive Director, Crisis Support Services of Nevada):
The video demonstrates the services provided by our organization. I have provided written testimony (Exhibit O) asking for your support of S.B. 282.

SENATOR SCHEIBLE:
I understand the bill is not retroactive, but you mentioned the case being litigated is by an out-of-state plaintiff. Does the bill address out-of-state claims adequately?

MR. HEANY:
The plaintiffs reside in Florida and resided in Maine when the incident occurred. They hired an attorney in Texas who retained local counsel in Nevada. Since the text message came into the Call Center in Washoe County, the lawsuit was filed in the Washoe County District Court.

SENATOR SCHEIBLE:
Is there precedence for filing these cases in a Nevada State court, and is it the proper venue?

MR. HEANY:
Yes. Certain cases can be filed in federal court if it is interstate litigation.

SENATOR PICKARD:
I support the idea that like a first responder, a crisis call center should enjoy some of the protections we afford all first responders. I was not aware of the

pending litigation. We try to avoid bringing bills that affect pending litigation. I understand section 3 somewhat addresses the issue. The bill does not state the court cannot consider what we are doing in the Legislature. Is it the intent of the bill that we are not providing an avenue for an attorney, in this case, to make an argument that maybe in a motion or some other pleading where they are referring to what just happened in the Legislature, should we pass this? Just because we make it prospectively applicable does not stop an attorney from making the argument. Are we introducing positive legislation in a way that is going to affect pending litigation?

MR. HEANY:
The bill states it is not retroactive, it is prospective. Defense counsel would be wise enough not to say there is a law saying limited liability. It is much like the law we have that prevents introduction of subsequent remedial measures. You cannot introduce evidence showing that the condition is fixed which may have caused injury to someone previously. We have safeguards to keep out evidence where the probative value is exceeded by the prejudicial danger. The judge would understand it would be prejudicial for the defense counsel to introduce evidence of passage of a law granting immunity. I do not see this as a concern. The trial is set for May 28. I thought this would be over, either settled or through alternate dispute resolution.

SENATOR PICKARD:
We are not barring consideration of this legislation in this bill. There is no prohibition; in fact, I regularly look at statutory intent and discussion made even if the bill does not pass. It would be malpractice if the plaintiff's counsel does not mention the legislation unless it is barred. Can we strengthen the language so we do not cross the line?

SENATOR GANSERT:
We are open to an amendment.

SENATOR OHRENSCHALL:
Do other states have similar legislation to S.B. 282? Of the staff taking calls, what is the percentage of paid versus volunteer staff? Do all staff receive the same training, regardless of status?

MS. PELLISSIER:
We have an equal number of paid staff and volunteers. They all receive the same training. They receive more than 73 hours of training.

MR. HEANY:
Nine states recognize the doctrine of charitable immunity.

SARAH ADLER (Nevada Coalition to End Domestic and Sexual Violence):
The Coalition is in support of S.B. 282.

BILL BRADLEY (Nevada Justice Association):
We consistently are in opposition to bills that grant immunity to individuals, corporations or nonprofits. When Center staff fails to follow procedure resulting in a suicide, they must be held responsible.

The teenager reached out by text to the Center. During the interview with the teenager by text, the staff member was working with multiple phone calls and texts of equally susceptible children and people in crisis. She did try to get information. He said he was suicidal and he would end his life by hanging unless he could find a gun sooner. Three-quarters of the way through the text, the shift changed. The original staff member left instructions to the oncoming worker to follow up with the teenager. That did not happen. When the crisis worker received the text, he or she had multiple texts and calls going. There was 15 minutes when there was no communication. The second crisis call worker assumed that to be a good sign. The worker sent a text asking if he was okay, and the teenager texted yes. That was the end of it. The policies and procedures of the Center require a follow-up and safety plans.

This is the third bill I have seen that tries to influence the outcome of a lawsuit. The other two bills did not pass. The bills were distasteful, as is this bill. I realize Mr. Heany does not apply it to any lawsuit prior to July 1. Do we want to immunize the organization that serves as the initial contact of people in crisis?

Whatever action the Committee takes will be put in a motion by the side that perceives it is favorable to them.

Immunity prevents juries from deciding cases. We do not want to litigate our cases in front of the Legislature. Immunity breeds irresponsibility. This case can serve as a teaching tool to future crisis workers about what needs to be done.

SENATOR HARRIS:
Is there immunity for gross negligence?

MR. BRADLEY:
We are not asserting gross negligence. The bill is ambiguous on what the standard is. The Legislative Counsel's Digest of S. B. 282 states "the activity that caused the injury or damage was not willful, wanton or grossly negligent," meaning intentional conduct. Going forward, we will have to prove the conduct of staff was intentional. The third condition is gross negligence. We are not required to establish gross negligence; under the law and we are not asserting gross negligence; our case is based on negligence. The crisis workers did not follow policies and procedures that directed their actions; as a result, their conduct was unreasonable and negligent. This bill will affect all lawsuits coming forward when there is negligence. It would eliminate the ability to hold the wrongdoer accountable.

SENATOR HARRIS:
These services are provided to those most in need and in vulnerable positions. In other areas of the law or other essential services, we allow immunity because they are so essential and we want the people who are provided the services to feel like they can do their job freely without being sued. Why is this situation different?

MR. BRADLEY:
Whether we are dealing with true first responders, some states extend certain immunities. Nevada has a particular kind of immunity that may apply, but under other theories of law, immunities do not apply to first responders. The role of the Center is to prevent suicide. The Center puts the first responders with the people in crisis. That is what should have been done in our case. The Center has policies and procedures that lay out what it should do. Had that been done, the parents would have been made aware of the crisis and within hours, the child would have been in therapy.

SENATOR OHRENSCHALL:
If this case goes to trial, negligence is found and a verdict is rendered, we are not bringing the child back. What do you hope the outcome to be?

MR. BRADLEY:
Our goal is to make sure this does not happen to another family.

SENATOR HAMMOND:
Should we give immunity? Can we work on the language in order to move forward?

MR. BRADLEY:
Gross negligence and negligence are different. To only hold someone accountable for gross negligence is a significant deviation from the law. If a reasonable person would have taken actions that the defendant failed to take, that is negligence. Whenever there is a bill to do away with negligence by immunity, it takes away the right of a jury trial. The most destructive side of immunity is in cases decided before the facts are heard since the decision is made in the Legislature. There is no language added to the bill to affect that basic tenet of our law. When someone fails to react in a reasonable fashion under the circumstances, there is accountability and responsibility.

SENATOR HANSEN:
A reasonable person will not volunteer if there is a possibility he or she will be sued for a simple act. The Center has helped thousands of people. Would you agree it has helped thousands of people?

MR. BRADLEY:
I assume the policies and procedures were followed in those instances and the system worked. The Executive Director agreed with us when asked the question. We believe when the policies and procedures are followed, it will prevent suicide. Volunteers should not be deterred because they are held responsible for conduct.

SENATOR HANSEN:
I am concerned if the bill does not go forward, it will scare people away from working at the Center.

SENATOR PICKARD:
I do not want to litigate the case. We are getting into the details, and it is inappropriate. I agree with Senator Hansen. The services are critical, and we need to protect them. Would you agree by adding language stating expressly that a court cannot consider the actions of the Legislature in any pending litigation that alleviates the concerns without completely destroying this group or similar group's ability to provide services that the State does not provide and would be subject to sovereign immunity if it did?

MR. BRADLEY:
I cannot agree. I have never seen a bill that says this bill cannot be considered. A judge sitting on this case will know about the actions of this Committee. It is wrong.

SENATOR PICKARD:
I can point to NRS 125C.0075, subsection 1 as an example of a statute which states certain facts cannot be used.

SENATOR SCHEIBLE:
If we have judges that cannot apply the law and separate the law from the court of public opinion or current events, is there a larger problem with the judges?

MR. BRADLEY:
Nevada has no suicide law. Many states have evaluated suicide and death by suicide in civil litigation. Some states favor our position and others contradict our position. Senate Bill 282 is intended to address that absence of law. Whatever action this Committee takes will go in front of the judge. If we had statute, it would not be as problematic.

SENATOR GANSERT:
The opposition states it is opposed to any immunity. The bill is narrow, and the organization provides essential services. We are concerned the services will not be available unless the bill is passed. This is a lifeline for the Center, which is a lifeline for thousands of Nevadans and people across the Country.

MR. HEANY:
There is no intent on the part of the Center to influence our case. We are concerned for the future and how it affects the ability of the Center to continue

to operate in Nevada. We attempt to follow the policies and procedures by the American Association of Suicidology. It is not the case that immunity breeds irresponsibility. The legislation is not going to make the Center act irresponsibly. Mr. Bradley mentions if the bill is defeated here, he will bring this to the attention of the court. We have no intention of bringing the legislation to the judge if it does pass. We are not at fault. If we are exposed to every wrongful death claim for every person committing suicide after he or she has contacted the Center, we will be unable to withstand the burden. The intent of the bill is to ask for limited immunity. We have no control over someone committing suicide. Our mission is to help prevent people from committing suicide.

CHAIR CANNIZZARO:
We will close the hearing on S.B. 282 and open the hearing on S.B. 436.

SENATE BILL 436: Revises provisions relating to professional entities. (BDR 7-1147)

DAN MUSGROVE (Nevada Healthcare Reform Coalition):
Senate Bill No. 163 of the 79th Session allowed similar practitioners to join in a practice. We have an amendment (Exhibit P) with language we borrowed from Texas legislation in 2017.

CATHERINE O'MARA (Nevada State Medical Association):
We support S.B. 436 with the amendment submitted by Mr. Musgrove.

MR. MUSGROVE:
Scott Anderson from the Secretary of State's Office was here earlier and had to leave. Mr. Anderson has no issues with the bill or the amendment.

CHAIR CANNIZZARO:
Having no further business, I will adjourn the Senate Committee on Judiciary at 11:42 a.m.

RESPECTFULLY SUBMITTED:

Andrea Franko,
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
S.B. 392	C	1	Senator Joyce Woodhouse	Proposed Amendment
S.B. 392	D	7	Michael Kosor	Written Testimony and Supporting Documents
S.B. 392	E	1	Michael Kosor	Proposed Amendment
S.B. 384	F	19	Tonja Brown / Advocate for the Innocent	Testimony Petition for Exoneration
S.B. 384	G	3	Tonja Brown / Advocate for the Innocent	Supporting Documents 4
S.B. 384	H	2	Tonja Brown / Advocate for the Innocent	Proposed Amendment
S.B. 384	I	11	Tonja Brown / Advocate for the Innocent	Supporting Documents 3
S.B. 384	J	57	Tonja Brown / Advocate for the Innocent	Supporting Documents 2
S.B. 384	K	8	Tonja Brown / Advocate for the Innocent	Petition for Exoneration and Order Dismissing Appeal
S.B. 384	L	12	Tonja Brown / Advocate for the Innocent	Supporting Documents 1
S.B. 384	M	2	Washoe County District Attorney's Office	Fiscal Impact
S.B. 384	N	2	Clark County District Attorney's Office	Fiscal Impact
S.B. 282	O	4	Rachelle Pellissier / Crisis Support Services of Nevada	Testimony
S.B. 436	P	1	Dan Musgrove / Nevada Healthcare Reform Coalition	Proposed Amendment