MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eightieth Session
April 4, 2019

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:16 a.m. on Thursday, April 4, 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 LEGISLATOR PRESENT:

Senator Pat Spearman, Senatorial District No. 1

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Susan Roske, Director, Western Juvenile Defender Center, National Juvenile Defender Center
Kristina Wildeveld, Nevada Attorneys for Criminal Justice
Holly Welborn, American Civil Liberties Union of Nevada

Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender, Washoe County
Jared Busker, Children's Advocacy Alliance
Mike Dyer, Nevada Catholic Conference
Chuck Callaway, Las Vegas Metropolitan Police Department
Corey Solferino, Washoe County Sheriff's Office
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Michael Whelihan, Assistant Director, Department of Juvenile Justice Services, Clark County
Brigid J. Duffy, Chief Deputy, Juvenile Division, Office of the District Attorney, Clark County
John T. Jones, Jr., Nevada District Attorneys Association
Kimberly Mull, Kimberly Mull Advocacy and Consulting
Daniele Staple, Executive Director, The Rape Crisis Center, Las Vegas
Melissa Holland, Executive Director, Awaken
Sondra Cosgrove, President, League of Women Voters of Nevada
Sara Cholhagian, Dignity Health-St. Rose Dominican
Barbara Jones
Marlene Lockard, Nevada Women's Lobby
Serena Evans, Nevada Coalition to End Domestic and Sexual Violence
Amy Coffee, Nevada Attorneys for Criminal Justice
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Corey Solferino, Washoe County Sheriff's Office
Eric Spratley, Nevada Sheriffs' and Chiefs' Association
Alice Little
Ross E. Armstrong, Administrator, Division of Child and Family Services, Department of Health and Human Services
Dennis A. Perea, Deputy Director, Department of Employment, Training and Rehabilitation
Robert C. Kim, Business Law Section, Executive Committee, State Bar of Nevada
Scott W. Anderson, Chief Deputy, Office of the Secretary of State

CHAIR CANNIZZARO:
We will open the hearing on Senate Bill (S.B.) 353.

SENATE BILL 353: Revises provisions governing juvenile justice. (BDR 5-32)

SENATOR JAMES OHRENSCHALL (Senatorial District No. 21):
I have been a deputy public defender in the juvenile division of the Clark County Office of the Public Defender for seven years. I represent children who often are experiencing great crises in their family lives. Issues include homelessness, substance abuse and undiagnosed, untreated mental health conditions.

Children are brought into custody for everything from graffiti to homicide. Legal scholars and state legislatures, including Illinois and California, that have passed laws similar to S.B. 353 have trouble understanding an aspect of the juvenile justice system. One of the reasons I sponsored the bill is my concern about how well children under arrest understand the Miranda warning.

We are familiar with the Miranda warning from television and films:

> You have the right to remain silent. If you give up that right, anything you say can and will be used against you in a court of law. You have the right to have an attorney present during this and any questioning.

The warning for children is slightly different, asking the child if he or she would like a parent present.

Many children in the scary, stressful situation of arrest do not understand the warning. Senate Bill 353 originated in A.B. No. 341 of the 79th Session, which I sponsored. It sought to require that an attorney be present when a child is arrested and read the Miranda warning, but that part of the bill did not survive.

I have narrowly tailored S.B. 353 to help our youngest and most vulnerable population facing the most dire consequences. The bill only applies to juveniles aged 13 accused of homicide and 14-year-olds accused of a felony, as per *Nevada Revised Statutes* (NRS) 62B.390. Those crimes can potentially result in the transfer of teens to adult court and prison. The model of juvenile delinquency court is rehabilitation, helping with children's life problems and ensuring they do not return to court. The model of adult court is not the same. Children at the Lovelock Correctional Center have, after being transferred, been sentenced as adults.

Senate Bill 353 would require that an attorney be present during the custodial interrogation of a child, not during normal conversations youths have with their parole or probation officers.

SUSAN ROSKE (Director, Western Juvenile Defender Center, National Juvenile Defender Center):

I was the chief deputy public defender in the Clark County Office of the Public Defender for more than 35 years. Senate Bill 353 provides for the electronic recording of custodial interrogations of certain young people, including the benefit of counsel. The bill only applies to a limited number of cases, children under the age of 15 accused of an offense that may subject them to transfer to the adult court system. During hearings on A.B. No. 341 of the 79th Session, testifiers said older children are more savvy and able to better understand their waiver of Miranda rights. Senate Bill 353 applies to the most vulnerable children in the juvenile system facing serious charges. They may not ultimately be transferred to the adult system, but felonies have serious ramifications even for teens remaining in the juvenile system.

In section 1, subsection 4, "custodial interrogation" is defined as when a person is a suspect in or the focus of an investigation. He or she is in custody and not free to leave. When officers begin to question a suspect, that is a custodial interrogation at which time officers must stop and read the Miranda warning. The suspect either waives or asserts his or her constitutionally guaranteed rights. If rights are asserted, questioning stops and the suspect is allowed to summon an attorney.

Under the bill, for 13- and 14-year-olds, the questioning must stop right there and a lawyer be summoned. The child cannot waive counsel at that point because we understand children are different from adults. Many cases before the U.S. Supreme Court have acknowledged that difference. In *Haley v. Ohio,* 332 U.S. 596 (1948), the Court ruled teens are too young to exercise, let alone comprehend, their rights, so they become easy victims of the law.

Many teen suspects suffer from disabilities, poverty, abuse and neglect, making it even more difficult to comprehend their rights. I have had many young clients who do not even understand what is a right or waiver. They do not understand that the Fifth Amendment guarantees we all have the right to remain silent when faced with possible self-incrimination. To waive that right is a powerful thing that children in that situation do not understand. That is why it is so

important to have a lawyer present to explain the ramifications of waiving their rights.

In *Gallegos v. Colorado*, 370 U.S. 49 (1962), the Court ruled 14-year-old Gallegos was not equal to the police in his knowledge and understanding of the consequences of their questions. He was unable to protect his own interests and assert his constitutional rights. In *Graham v. Florida*, 560 U.S. 48, (2010) and *Roper v. Simmons*, 543 U.S. 551 (2005), justices recognized that adolescents' lack of maturity affects their ability to make decisions, so they must be treated differently under the law. In *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), the Court held that custodial interrogations include inherent pressures that can induce a frighteningly high percentage of people to confess to crimes they did not commit. Recent studies suggest the risk is more acute when the subject of the interrogation is a child.

In the post-2000 cases, Court justices looked at research on adolescent development, which underscores teens cannot make decisions the same way adults do. Psychological factors influence their perceptions and judgment and limit their ability to make autonomous decisions or choices. When children look at adult authority figures, they do not understand they can say, "No, I do not want to answer questions." Research also supports the conclusion that juveniles' responses to threats increase when they consider the range of options. Being faced with an officer asking questions and understanding you are a suspect is extremely stressful, especially for a 13- or 14-year-old.

Advances in neurological and developmental science suggest the brain's cognitive function continues to develop into young adulthood. The Flesch-Kincaid Readability Test Tool study of the Miranda warning found suspects must have at least a twelfth-grade reading comprehension level to understand their rights. A study found one-third of false confessions are attributed to children under the age of 18. According to the Innocence Project, 38 percent of exonerations of crimes by youths under the age of 18 are due to false confessions, compared to 11 percent by adults.

In California's 2017-2018 Legislative Session, S.B. 395 mandated that children under the age of 18 consult with counsel before custodial interrogations and waiving their Miranda rights. Two California juvenile offenders told me that as a result of S.B. 395, they have established collaborative relationships with officers who called them on a hotline.

Attorneys tell me that virtually every youth suspect feels confused, anxious, isolated, frightened and needy of counsel when faced with interrogation. The attorney is also there to help teen suspects' families through an intimidating process before and after interrogations. Some youths are facing lifetime sex offender registration even if they stay in the juvenile system. There are collateral consequences to having a felony adjudication in the juvenile system that may impact college applications and scholarships and employment.

SENATOR OHRENSCHALL:
An article by Professor Elizabeth Cauffman (Exhibit C contains copyrighted material. Original is available upon request of the Research Library.) of the University of California, Irvine, talks about brain development and challenges young people have with understanding what is going on when they are arrested and read the Miranda warning.

KRISTINA WILDEVELD (Nevada Attorneys for Criminal Justice):
Senate Bill 353 provides for procedural protections for juveniles. Section 1, subsection 1 mandates that if a juvenile is being investigated for a crime for which he or she could be adjudicated as an adult, any custodial interrogation must be recorded. The U.S. Supreme Court has consistently recognized the difference between juveniles and adults, specifically the characteristics of youths that make them less likely to understand or exercise their Miranda rights and more likely to falsely confess under the pressure of interrogation tactics. It is important for attorneys to have recordings of interrogations in order to assess if juveniles have understood the Miranda warning and the nature, settings and circumstances of confessions. These factors are integral to assessing the validity and admissibility of juvenile statements.

Assembly Bill (A.B.) 107, introduced in the Assembly Committee on Judiciary, provides for the electronic recording of interrogations of adults accused of certain crimes.

ASSEMBLY BILL 107: Establishes provisions relating to the electronic recording of certain custodial interrogations. (BDR 14-588)

Juveniles at risk of being charged and adjudicated as adults and facing prison should receive identical protections. As an attorney with extensive experience in working with juveniles, I can attest I have had young clients make false self-incriminatory statements under interrogation. We should ensure the integrity

of our State criminal justice system with proper protections to avoid scenarios in which false or uninformed confessions are allowed to be used as evidence in cases against children.

I am representing a 14-year-old boy in Clark County who gave a full confession without the aid of an attorney. I will never know what led him to do so, but since we have that confession, we must go forward with it. In my 24 years of representing juveniles, many have given self-incriminating statements in the entirely wrong context. I represent clients in juvenile certification hearings, which are not about determining guilt or innocence of the child. They are about whether the juvenile system can appropriately aid that child or whether the crime is so severe it needs to go to adult court. If we had a videotaped interrogation, we could assess whether the child has issues better served in the juvenile system.

In Nevada, we believe strongly in the importance and necessity of having attorneys present during juvenile interrogations, especially for serious crimes. The Nevada Attorneys for Criminal Justice (NACJ) is willing to set up a hotline for attorneys to answer any time a juvenile has been arrested or charged with murder or other serious crimes. Any child who has police contact for a serious crime can call to ask that an attorney to be present to advise him or her whether to speak to police at that time and whether that is in his or her best interest. I would ask the bill be amended to cover all juveniles at the age of 18 and under.

SENATOR OHRENSCHALL:
You have a report by the Innocence Project, "Recordings of Custodial Interrogations Briefing Book" (Exhibit D), which explains how such interrogations work and their benefits.

SENATOR HAMMOND:
Let us say a police officer shows up on scene and finds a group of teens. Something like property damage has happened, and the officer starts to assess the scene by questioning the juveniles. From what I have heard today, that is acceptable: as long as the officer is ascertaining information, he can ask questions. Can the answers he receives be used later in the investigation? Some of the children are taken to the substation and then asked to start talking in a room. Is that when you want the attorney to be present in case a statement is taken electronically? Would that be someone who is on call even if it is

10:00 p.m.? If a statement is not recorded, does an attorney have to be present? At what point does the situation stop being an officer just trying to ascertain what happened and when does an attorney need to be present?

SENATOR OHRENSCHALL:
Senate Bill 353 only applies to 13- and 14-year-olds charged with offenses that could result in transfer to adult court and prison. Your example of property crime is not covered by the bill.

SENATOR HAMMOND:
Let us say the crime is on the level described in the bill.

SENATOR OHRENSCHALL:
Section 1, subsection 4 defines "custodial interrogation." It does not involve the juvenile being in custody.

SENATOR HAMMOND:
The office will try to ascertain what happened, and that can be used as evidence, correct?

MS. ROSKE:
Yes. Police make that determination right on scene while gathering information. At the time an individual becomes the focus of the investigation, is in custody and officers want to interrogate him or her, by law the Miranda warning must be administered. Can youngsters, on their own in that stressful situation, properly waive their rights?

SENATOR HAMMOND:
At that point, does an attorney need to be present?

MS. ROSKE:
Yes, to help the child understand the warning and he or she has the right to say no to assert the constitutional right.

SENATOR HAMMOND:
It is 10:30 p.m. The officer has asked five individuals what happened. He receives information that is damaging to one of the teens and decides to arrest that teen. Would the individual have to wait on scene for an attorney before the Miranda warning is read?

MS. ROSKE:
Yes, if questions will be asked, the warning must be administered. If a person is in custody because he or she is a suspect, he or she is not free to leave. Teens do not have to answer questions, and they have the right to an attorney. Senate Bill 353 simply says they do not have the proper judgment to make that decision without counsel.

SENATOR HAMMOND:
Do the teens not have to be at a police substation for the interrogation? Can it be out in the field as soon as the officer realizes the Miranda warning must be read?

MS. ROSKE:
Under the bill, the officer would have to wait for an attorney.

SENATOR DONDERO LOOP:
How will juveniles be informed about the bill's requirements? I envision a scared child who does not know about it. Is it the officer's duty to give teens the information?

MS. ROSKE:
Officers will understand they cannot continue questioning 13- or 14-year-olds suspected of serious crimes until an attorney is present.

SENATOR DONDERO LOOP:
The onus will be on the officer.

MS. ROSKE:
At that point, yes.

SENATOR OHRENSCHALL:
If, through a hotline, an attorney was unable to be there, if there were probable cause to arrest the child, nothing in the bill would prevent that.

SENATOR PICKARD:
The difference between investigatory and custodial questioning is the potential suspect is unable to leave. In Senator Hammond's scenario, the officer knows the youth may say something incriminatory at any time. If the teen wants to go but is prevented from doing so, that is now a custodial interrogation that must

be recorded, right? It does not sound like the officer can continue questioning until the Miranda warning has been read and an attorney is present.

MS. ROSKE:
There are two elements: being in custody and interrogation. Investigation questions are one thing, but interrogation is when a suspect has been identified after an officer has received evidence that focuses on a particular individual. Officers know that when they focus on an individual and want to interrogate him or her, the Miranda warning must be read and an attorney summoned.

MS. WILDEVELD:
Parental notification is required when police come into contact with juveniles. Senate Bill 353 will add the protection that teens must understand their Miranda rights, the interaction is videotaped and an attorney from a hotline is there.

SENATOR PICKARD:
How do the bill's provisions differ from current practice? Let us say it is 2:00 a.m., someone has been shot to death and other teens are standing around. The officers must treat everyone as a suspect. They try to get information, separate out people and forbid them to leave. That is now a custodial interrogation that must be recorded in the presence of an attorney. Would not all of the teens need to be detained?

MS. ROSKE:
The key word here is interrogation. That is not just questioning for an investigation; it is focused on a particular individual. The officers already have information pointing to the person as a suspect who will be asked questions about his or her direct involvement in the crime.

SENATOR PICKARD:
How does that differ from current practice?

MS. ROSKE:
The bill will require that 13- and 14-year-olds have the added benefit of not being able to waive their rights until they talk to a lawyer.

SENATOR PICKARD:
I agree with you that children lack fully developed prefrontal cortexes, resulting in a lack of judgment and understanding in all areas of life. My understanding is

once an officer determines he or she has a suspect—of any age—to the point the Miranda warning is issued, the U.S. Supreme Court has determined those rights cannot be waived. Is that what you said?

MS. ROSKE:
No.

SENATOR PICKARD:
Are you saying that under current practices, officers regularly interrogate suspects without the benefit of an attorney?

MS. ROSKE:
In my experience, children are read the Miranda warning and then asked if they want a parent present. Then officers start the questioning.

SENATOR SCHEIBLE:
I want to clarify that the bill is not inventing a new legal concept with custodial interrogation. You are taking an oft-litigated concept based on factual circumstances and adding additional protections for juveniles in custodial interrogations, right?

MS. ROSKE:
Yes. We are adding a lawyer to an existing process to stop continued interrogation. Very few children in the system have the benefit of attorneys to help them make decisions.

SENATOR SCHEIBLE:
Under NRS, children must write to attorneys seeking help; now, they will have an automatic opportunity to speak to attorneys as if they had invoked that right before proceeding with the rest of custodial interrogation and other procedures.

SENATOR OHRENSCHALL:
That is our intention.

SENATOR SCHEIBLE:
Are you adding a new protection of having interrogations recorded when applicable?

SENATOR OHRENSCHALL:
Yes. Most State police agencies already record those kinds of contacts, but the bill will put it into NRS.

CHAIR CANNIZZARO:
Section 1, subsection 1, paragraph (a) identifies children under the age of 15 who commit "An act deemed not to be a delinquent act pursuant to subsection 3 of NRS 62B.330." What crimes are covered under that paragraph? I know paragraph (b) applies to children at the age of 13 charged with murder or attempted murder and to children at the age of 14 charged with felonies. Which specific crimes fall under paragraph (a), because NRS 62B.330 seems to cover murder and felonies for children at the age of 16 and over?

MS. ROSKE:
We have not addressed that because it is such a minor provision in NRS. It applies to nondelinquent offenses such as truancy. We do not see many such cases that require interrogation of children in custody.

SENATOR OHRENSCHALL:
Decades ago, truancy was charged as a delinquent act but no longer.

CHAIR CANNIZZARO:
I am unsure as to what that subsection is meant to address, unless it potentially pertains to truancy. I find it confusing because NRS 62B.330 seems to pertain to children at the age of 16 and older who commit extremely serious crimes not deemed delinquent acts.

In section 1, subsection 4, the term "custodial interrogation" is defined. Typically, that is a fact-intensive inquiry addressed in a plethora of caselaw. Why are we defining something in NRS that has not been in it historically?

SENATOR OHRENSCHALL:
One of the concerns raised by law enforcers about A.B. No. 341 of the 79th Session was making sure it only applied to custodial interrogations, not to interviews in which a child is free to leave. My guidance for the drafters of S.B. 353 was to address those concerns by specifically defining custodial interrogation in NRS. I am open to making it more consistent with other areas of NRS.

CHAIR CANNIZZARO:
Given a particular fact pattern, prosecutors argue whether interrogation is custodial in nature. That is a fact question left to the trial court and potentially the judge to determine to suppress evidence if the questioning violated the definition of custodial interrogation. I hesitate to put into NRS a definition of what that would be. The potential for it to be used for other cases increases if it would now be in NRS.

The idea is that officers will record statements with an attorney present. There are a number of circumstances in which a child would be subject to a custodial interrogation for something that does not fall within the crimes enumerated in S.B. 353. What happens if a child is subject to a custodial interrogation for, say, a theft crime that does not fall within the bill's definition? The child is nevertheless placed in custody and questioned by officers. During the course of the interrogation, it is revealed there are circumstances in which the child will confess to something that will lead to the investigation of a murder or sexual assault that will trigger S.B. 353. At what point do we say that interview is a custodial interrogation, and what would be admissible from it?

SENATOR OHRENSCHALL:
The way I envision the bill's implementation, if a 13-year-old is stopped for shoplifting and during the investigation or custodial interrogation there is evidence of a homicide, things would shift. The bill's protections would come into play for 13- and 14-year-olds potentially facing transfer to adult court or prison.

MS. ROSKE:
If the custodial questions about shoplifting elicit answers about an entirely different crime, a new investigation starts. When it comes to the point that the teen is a suspect and a new custodial interrogation ensues, the questioning would have to stop, pursuant to S.B. 353.

CHAIR CANNIZZARO:
How much of that would be admissible if it was subject to a proper custodial interrogation? We are assuming the child is in a custodial interrogation situation for a different crime that would not fall under the purview of this portion of NRS. What portion of the interrogation triggers the bill's provisions, and at what point do statements become inadmissible whatsoever?

SENATOR OHRENSCHALL:
My hope would be that once the investigation changes from a misdemeanor like shoplifting to the kind of crime that could get a child into adult court, the requirement for an attorney would kick in.

MS. WILDEVELD:
Years ago, I represented a 13-year-old child with whom police came into contact after they found a dead homeless man in the parking lot of the Carl's Jr. restaurant at the Stratosphere on The Strip. Officers interviewed everyone at the restaurant, all of whom were underage. Eventually, that investigation led to the individual who became my client. Officers interrogated him without a parent or attorney, which resulted in first-degree murder charges. His parents were across the street at the Aztec Hotel, yet the police did not notify them.

When officers focused on one 13-year-old, they should have called a hotline for an attorney to be present at that point before the child confessed to the murder. He had gotten into a fight with the homeless man, who fell and hit his head on a cement parking block. An attorney's presence when giving a statement that led to first-degree murder charges would have aided the boy by making clear his rights and the option to not speak to the police.

CHAIR CANNIZZARO:
At what point does it turn into a custodial interrogation that would be subject to S.B. 353 provisions versus just an interview by police or a custodial interrogation that would not fall within the statute? The bill delineates different practices based upon the subject of the interrogation.

Section 1, subsection 3 does not contain provisions for an attorney hotline. From the perspective of Senator Hammond's question about how lawyers are notified or appointed, the answer is a hotline. What about in rural counties without hotlines? Children are already normally given attorneys after it has been determined they are indigent or cannot hire one.

MS. WILDEVELD:
I envision something similar to the search warrant hotline for which someone is always on call. Nevada Attorneys for Criminal Justice has representation throughout the State, including the rural districts. Any lawyer who has volunteered for the hotline may be present.

CHAIR CANNIZZARO:
Will the bill be amended to establish a hotline?

SENATOR OHRENSCHALL:
The bill leaves it up to each county to establish its own program to set up a hotline on a volunteer pro bono basis. I am open to adding specific language to that effect.

CHAIR CANNIZZARO:
The bill places a burden on the State that an attorney must be present, so we must address that.

SENATOR PICKARD:
Who will pay for the hotlines? We are talking about preadjudication when counsel has not yet been appointed. We cannot count on volunteers to be there in every county in every instance.

MS. ROSKE:
Section 2, subsection 1, paragraph (b) presumes children are indigent when attorneys are appointed. The State or county would appoint counsel if there is no volunteer pro bono program. Those entities already provide counsel for the indigent. Nothing prevents officers from halting questioning and waiting for a lawyer to effectuate arrests if there is sufficient evidence. Just questioning stops, not the entire process.

SENATOR PICKARD:
That will lead to more attorney fees or detentions before attorneys show up. That will be a significant burden on many counties. If the issue is children do not understand their Miranda rights, maybe we could rewrite it so they are more likely to understand it, and we then avoid the whole problem.

MS. ROSKE:
More likely than not, the cases will be prosecuted anyway. Officers will effectuate arrests, and children will be processed and appointed counsel. The additional financial burden will be minor.

MS. WILDEVELD:
There would be a front-end cost. The cost of litigating a suppression for a juvenile confession without an attorney present would still be assessed.

SENATOR PICKARD:
Yes, the front-end cost is not currently being incurred. Once attorneys are appointed, costs kick in. Are you saying costs will be reduced overall moving forward? The attorney cost would just be moved up in time. Are they not paid by the hour?

MS. WILDEVELD:
I am talking about litigating a confession suppression, which involves significant litigation. If a child is appointed counsel, that cost would already be incurred. The hotline NACJ is envisioning would be on a pro bono basis. I have a track in juvenile court for more difficult or time-consuming cases for which attorneys can be paid hourly; otherwise, it is on a contractual basis in which all juvenile cases are covered by the Clark County indigent defense fund.

SENATOR PICKARD:
Would the hotline obviate the need for an attorney being present? Or will the hotline be used to merely summon an attorney?

MS. WILDEVELD:
If our children were in custody, as parents, we would be present. We are giving those indigent children the same protections. An attorney would come at the call of the child, no matter what time, instead of a parent.

SENATOR OHRENSCHALL:
The attorney would be physically present during custodial interrogations in a juvenile detention facility or in the field.

SENATOR HAMMOND:
Senate Bill 353 will be a mandate. Juveniles will be told they have Miranda rights, not necessarily if they want to exercise them. An attorney must be present. If it takes hours before an attorney can show up, that becomes an added cost because the child must be detained somewhere. How long do we wait? If a deadline is passed, does the county then appoint someone, incurring further costs?

MS. ROSKE:
If an attorney cannot arrive immediately and there is no probable cause to arrest, the officers are free to release children to parents and then arrange for a

later interview. If there is probable cause, the child can be arrested and arrangements made for a later custodial interrogation.

SENATOR HAMMOND:
Does time ever become a factor in that scenario?

MS. ROSKE:
Perhaps if it takes a few hours for an attorney to arrive.

SENATOR HAMMOND:
Now we have officers out in the field trying to decide how far their investigations can go before they become custodial interrogations. Even though that concept has existed for a long time, we are now codifying it. Maybe an officer will worry if his or her next question is going beyond that and there is not enough evidence for an arrest. The worry is what will be admissible, and to cover his or her bases, an attorney is called. How long does the officer wait?

SENATOR OHRENSCHALL:
If there is probable cause for an arrest, nothing in the bill will stop that. It only applies to the most serious crimes, so its imposition would probably be a rare occurrence.

SENATOR HAMMOND:
I am still concerned if an officer goes past the point of needing an attorney or parent present.

MS. ROSKE:
Officers make that call every day when it comes to questioning suspects in custody. They know Miranda warnings must be administered and attorneys summoned.

CHAIR CANNIZZARO:
Section 1, subsection 4, paragraph (b), subparagraph (1) states, "If audiovisual recording is feasible." How do we define "feasible"? The only exception is in section 1, subsection 2, paragraph (a), "exigent circumstances" which include "a serious and immediate threat to the safety of the child or to the safety of others" or if a child is supervised by a probation officer. What constitutes feasible audiovisual recording?

SENATOR OHRENSCHALL:
My guidance for the bill drafters was to ensure officers' hands are not tied if some sort of emergency arises in which a child might threaten to harm himself or others or during ordinary conversations between probation officers and young charges.

CHAIR CANNIZZARO:
The bill seems to require both video and audio recording if feasible, which is unclear.

SENATOR OHRENSCHALL:
Section 1, subsection 4, paragraph (b), subparagraphs (1) and (2) are connected by "or." The recording can be audiovisual or audio-only.

CHAIR CANNIZZARO:
That is contingent upon it being feasible, not one or the other; it must be an audio recording if it is unfeasible.

SENATOR OHRENSCHALL:
My intent is not to hamstring law enforcement.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
In 2013, the National Registry of Exonerations found that since 1998, 38 percent of exonerations for alleged crimes committed by youths under the age of 18 involved false confessions compared to 11 percent for adults. This reflects a serious problem involving the interrogation of minors. We are sending young people to prison who gave false confessions because counsel was not present. Senate Bill 353 takes the next, long overdue step.

KENDRA G. BERTSCHY (Deputy Public Defender, Office of the Public Defender, Washoe County):
The Offices of the Public Defender, Washoe and Clark Counties, strongly support S.B. 353. Over the years, the U.S. Supreme Court has repeatedly ruled that children should be regarded differently under the law. It is illegal for teens between the ages of 14 and 15 to enter into contracts or get married because of children's individual capacities. Their brains are not fully developed until the age of 25.

If you put a child into the highly stressful situation of police interrogation, studies have shown the comprehension of someone who may have already limited capacities due to age or circumstances to comprehend the Miranda warning plummets. A Harvard University researcher found that 52 percent of 371 juveniles could only comprehend the Miranda warning at an eighth-grade level. When compounded by police interrogation, that comprehension dropped to 20 percent.

When read to a child, the Miranda warning seems quite complicated. They do not understand they have a right to an attorney without charge. I have had children tell me, "No, I don't want to talk to you because I can't afford you."

The issue has been raised of how to pay for the mandated attorneys and how they can be at the scene within a reasonable time period. My Office interprets section 2, subsection 1, paragraph (b) as our attorneys would potentially be appointed to represent indigent children. We have discussed creating an on-call position because we understand the issue needs to be addressed in a timely fashion. The bill does not provide that children will get out of jail free or go unpunished. In New Mexico, any confession by a child under the age of 13 is inadmissible.

CHAIR CANNIZZARO:
Section 2, subsection 1 requires the juvenile court to appoint an attorney after a child has been deemed "delinquent or in need of supervision." Section 2, subsection 1, paragraph (a) provides for an attorney to be present during an investigation before a court is involved or the child is deemed delinquent and in need of supervision. How will children be represented in the context of investigations that precede the courts' involvement?

MS. BERTSCHY:
Section 2, subsection 1, paragraph (b) presumes the child is indigent for purposes of appointing an attorney. I do not know how the court would make that appointment and have an attorney from our Office present. That should be discussed. It is possible under our current setup that at a person's arraignment and 72-hour hearing, my Office represents him or her before a court has authorized our appointment. We will do the attorney conflicts check, and the conflicts counsel will handle those cases and be present for the 72-hour hearing.

JARED BUSKER (Children's Advocacy Alliance):
The Children's Advocacy Alliance supports S.B. 353.

MIKE DYER (Nevada Catholic Conference):
The Nevada Catholic Conference supports S.B. 353. I have practiced law for many years. Officers understand when Miranda rights are triggered; the confusion over that discussed today can be alleviated.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
The Las Vegas Metropolitan Police Department (LVMPD) opposes S.B. 353. While well-intended, it will actually cause more harm than good. Officers do not determine when a child is certified as an adult; we submit a case, and the district attorney's office makes that decision. The bill would apply to any felony committed by children at the age of 14 and under.

Let us say a boy is in custody for stealing a cell phone from Target that costs more than the $650 petty-theft threshold. Now, the officer can contact the parent and work with Target to expel the boy from the store and return the phone so he can be released. The Las Vegas Metropolitan Police Department has a policy of making every effort to divert children into The Harbor Juvenile Assessment Center and Southern Nevada Family Justice Center for services. To be frank, if an officer is unable to even talk to a child without recording the conversation with an attorney present, we will just take him into custody instead of staying in the Target for six hours waiting for the attorney. This scenario could apply to a teen who is in the back seat of a stolen vehicle or involved with a friend who commits a burglary.

Miranda v. Arizona, 384 U.S. 436 (1966), clearly states that if person reasonably believes he or she is not free to leave and is being questioned about a crime, the law applies. Any time a large incident occurs like the one Senator Hammond described where many people feel they are not free to leave and are being questioned, the law also applies.

Senate Bill 353 takes away parents' right to waive an attorney for their children. Let us say the officer at Target is able to get hold of the young thief's parent—NRS and LVMPD policy require us to make every effort to do so—and the parent says, "We don't need an attorney. Let's just work this out with Target." The bill would not allow that.

During the 2017-2018 Interim, I chaired a working group with the Innocence Project in which stakeholders worked on the recording of interrogations. The result was A.B. 107, which has passed out of the Assembly Committee on Judiciary and will soon arrive before this Committee. That bill accomplishes a lot of what the sponsor of S.B. 353 hopes to accomplish, and the LVMPD fully supports it.

There is nothing in S.B. 353 requiring an attorney to show up. They could have the mindset of, "Well, hey, if I don't even show up on the scene, they can't question the kid and gotta take some other measure. Let's filibuster this thing, and we just won't show up."

COREY SOLFERINO (Washoe County Sheriff's Office):
The Washoe County Sheriff's Office opposes S.B. 353 for the reasons stated by Mr. Callaway. In the Police Academy, officers are taught that custodial interrogation exists as a two-prong test when questioning a juvenile in custody. Many custodial interrogations occur in the field, so, logistically, we have concerns with that. Parents will not have an opportunity to tell children to cooperate with officers. Many times when we are out working an active crime scene, it is incumbent on parents to help us conduct a proper investigation.

SENATOR HARRIS:
Would your concerns be allayed if the bill were amended to require either a parent or an attorney be present?

MR. CALLAWAY:
That would go a long way in alleviating some of LVMPD's concerns. If the language were tailored more toward that of A.B. 107, we could fully support S.B. 353.

ALEX ORTIZ (Assistant Director, Department of Administrative Services, Clark County):
The Clark County Department of Administrative Services opposes S.B. 353. We have concerns about the hotline proposal because we are unsure who will ultimately fund it. We submitted a fiscal note on the bill.

MICHAEL WHELIHAN (Assistant Director, Department of Juvenile Justice Services, Clark County):
The Department of Juvenile Justice Services, Clark County, opposes S.B. 353. It is confusing about where custody begins or is implied. Subsection 1, paragraph (a) of NRS 62C.010 states a child may be taken into custody who "the officer has probable cause to believe is violating or has violated any state or local law, ordinance, or rule or regulation having the force of law" and may be released for supervised detention at home for further disposition.

Comments have been made about pre- versus postadjudication periods; however, the bill would also apply to preadjudication. Many times we put children on GPS or home management. In NRS 62B.330, the crimes committed by youths at the age of 16 and over are murder, attempted murder and sexual assault with use of force. We assume the bill will apply that to 13- and 14-year-olds. In 2018 in Clark County, only 2 youths were certified on murder charges and none on sexual assault or attempted murder. The average length of stay in our facility for juvenile sex offenders is 595 days. Our concern is the bill's intent for a child on probation for up to five years. Does the bill apply to youths up to the age of 18 whose charges are still open?

In section 1, subsection 2, paragraph (b), probation officers contacting children as part of normal or routine duties are not required to record conversations. "Custody" now has two meanings: a child has been handcuffed by an officer or probation officer or if he or she is in field custody. Let us say that I have a juvenile sex offender with an open sex assault with use of force charge. An officer goes to the boy's home, where the parents report he has watched pornography. Now we will have to seize the computer, arrest the child, bring him into detention and wait for the public defender to make an appointment to be at the interrogation. The majority of times we would not bring the boy in or add charges; instead, we would we would give him referrals to services specific to his offenses.

Section 1, subsection 4, paragraph (c) defines "interrogation" as when officers "should know [they] are reasonably likely to elicit an incriminating response from the child." Probation officers build trust and serve as role models or mentors to youths. Under NRS, probation does not constitute a law enforcement agency. We are peace officers who do not investigate the three crimes that I mentioned earlier. Why would the bill provide for something not under our jurisdiction? We use screening tools for risk and needs

assessment during which children may often divulge information. The bill will require a public defender present at every assessment. In 2018, our Department of Juvenile Justice Services had 13,000 referrals.

In Mr. Callaway's scenario, officers know the boy stole the phone. After the parents are contacted, he could be diverted to them; however, if the public defender cannot come to the scene, the child will now be booked. The average length of stay is 19 days during which the boy is guaranteed to be detained when he should not have been. The bill covers all felonies committed by young teens. We thought it meant just the three I mentioned before. Are we looking at certifiable cases or all of them? The felony theft of the Target phone is not a certifiable offense.

Will we be required to have audiovisual equipment in our facility or on our persons? That is not required for probation staff. If a 14-year-old offender has aged out of our system but his or her charge remains open, what happens if he or she commits a new offense and is recommended for certification? Will the district attorney use our unrecorded conversations as part of the new case?

What happens when a recording device fails? As for the hotline, if an attorney is summoned at 2 a.m. for the interrogation, will he or she follow the child through the entire court proceedings? In section 1, subsection 2, paragraph (a), when there are "exigent circumstances," officers can proceed without a recording. Probation officers complete clinical and competency evaluations on all children and explain the implications of their Miranda rights.

SENATOR HARRIS:
In the example of the boy looking at pornography, is the officer's only choice to bring him for 19 days if the officer cannot wait for an attorney? Why is there no option of having the boy return for later interrogation? Is he considered a flight risk?

MR. WHELIHAN:
A court order would have to be in place forbidding the boy from watching pornography. If we know he committed a crime yet fail to act upon it, we are violating NRS.

BRIGID J. DUFFY (Chief Deputy, Juvenile Division, Office of the District Attorney, Clark County):
The Juvenile Division, Office of the District Attorney, Clark County, would support S.B. 353 if its provisions were closer to those of A.B. 107, which will cover all juveniles. The section 1, subsection 1, paragraph (a) reference to NRS 62B.330 sparked a discussion of truancy. That NRS only applies to cases over which the Juvenile Court has no jurisdiction and offenders go directly into the adult system. Subsection 3, paragraph (a) of NRS 62B.330 references what we call "Columbine-type" homicides or attempted murders intended to cause mass casualties that occur on school property or during school hours. Subsection 3, paragraph (b) applies to children at the age of 16 or older. That has nothing to do with truancy.

We need a clear process concerning the attorney issue; otherwise, we will be litigating how and when attorneys arrive on scene. What, as Ms. Bertschy mentioned, if there are conflicts? Is there a backup plan for that? The Office of the Public Defender, Clark County, is "conflicting off" many of our cases because suspects have codefendants. If we put this law out there without really knowing how it will be implemented, we will all be scrambling on July 1. We will have problematic cases after attorneys failed to show up or show up and say, "Oh, I have a conflict. I know this kid; I have his codefendant." This could ultimately impact our community safety.

SENATOR SCHEIBLE:
During the initial contact with officers and reading of Miranda rights, would it be possible to waive conflicts that could not be waived later in the proceedings?

MS. DUFFY:
We do waive some conflicts at detention hearings, which is not ideal. Still, the process should first be in place. Switching attorneys on children is hardly good practice because consistency is important for them.

SENATOR SCHEIBLE:
We definitely need a process, which could include waiving the conflicts. However, we need clarity on under what circumstances and when conflicts are waived and a proper method for informing authorities of that.

MS. DUFFY:
Yes.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
The Nevada District Attorneys Association opposes S.B. 353.

SENATOR OHRENSCHALL:
Legislation similar to S.B. 353 has worked in Illinois and California. The intent is not for attorneys to be present for normal communications between a child and his or her juvenile probation officer or youth parole officer. The intent is not to interfere with putting children into preadjudication diversion programs like LVMPD's Harbor.

The intent is to help a small vulnerable population of teens who could potentially be transferred to adult court and prison. They must understand their Miranda rights and knowledgably make the waiver decision with the aid of learned attorneys. The brain science is there: 13- and 14-year-olds face major obstacles in understanding their rights.

CHAIR CANNIZZARO:
We will close the hearing on S.B. 353 and open the hearing on S.B. 368.

SENATE BILL 368: Revises provisions relating to protections for victims of crime. (BDR 2-166)

SENATOR PAT SPEARMAN (Senatorial District No. 1):
Senate Bill 368 makes significant improvements in NRS regarding sexual assault in criminal and civic wrongs. Sexual assault is a violent crime, and the victim's attire has nothing to do with the perpetrator's impulses. Negative societal attitudes about women are still pervasive even in the twenty-first century. They include women are chattel and property; women are the weaker sex and needy of protection from ourselves; women are responsible for any act of physical, psychological or sexual violence that we encounter; and women are not capable of thinking and making decisions for ourselves about our future, bodies and anything relevant to our self-determination.

You have my proposed amendment to S.B. 368 (Exhibit E). Dr. Larry Nassar for the Team USA girls' gymnastic team sexually abused more than 100 little girls. A high school track coach pleaded not guilty to unlawful sexual intercourse and other felonies, despite evidence contrary to that plea. Authorities said he had a long-term relationship with three underage students, the youngest of whom was 14. In 2008, a victim came forward after she and several other girls had been

sexually abused in a Maryland private school. The school began an investigation of the abuse allegations in February 2018 after a former student said she had been abused by two teachers starting when she was 13. In 2018, several former students interviewed by *The Washington Post* said they had been sexually abused by teachers taking advantage of the school's informal and progressive social atmosphere to exploit them. They said that in many instances, the actions were perpetrated on students who were members of families with little familial supervision.

Perpetrators know that human and sexual trafficking is big business, generating as much as $32 billion in profits annually. It is pervasive in Nevada, where we have often turned a blind eye to the sufferings of women placed in exploitation situations from which they cannot extricate themselves. Child sexual abuse includes a wide range of behaviors designed to erotically arouse older perpetrators without consideration for the reactions or choices of their victims.

Section 4, subsection 2, paragraph (a) of S.B. 368 provides that a child who was adjudicated delinquent for acts commonly associated with prostitution, solicitation or involuntary servitude may petition the court to have that adjudication vacated and all related records sealed if the court deems the petitioner was sex-trafficked. This applies to victims up to the age of 30.

Any prostitute at the age of 31 or older who has been previously arrested may also petition for the expungement of that record. Many women forced into prostitution cannot escape. Even after the age of 30, they should be allowed the opportunity of a second chance and to restart their lives.

We are working with the Department of Health and Human Services (DHHS), Department of Employment, Training and Rehabilitation and other organizations that offer employment-readiness services to treat these women as if they were victims in order to help them get their lives back on track.

Section 15 of the bill outlines the Sexual Assault Victims' DNA Bill of Rights and offender blood testing. It acknowledges that victims have a strong interest in the progress related to testing of their sex assault forensics examination kits. These provisions are dependent on the availability of resources for law enforcers to respond to victims' requests. The Bill of Rights allows victims to designate recipients of test information because it is sometimes just too difficult for victims to revisit his or her traumatizing event.

Sections 21 through 24 align State resources with victims who need them. During the 2017-2018 Interim, I dealt with victims of horrific crimes. The State fund is in the Department of Administration. Victims must go there, then to DHHS, which lines up their services. Victims then must return to Administration, and back and forth. In one case, this resulted in a victim being evicted because it took too long for services paperwork to be completed.

KIMBERLY MULL (Kimberly Mull Advocacy and Consulting):
I have a master's degree in victim services management, am an expert in sexual violence and victims' rights and have been recognized by Shared Hope International as one of the Country's leading policy experts in sex trafficking and prostitution. I am a survivor of child pornography, sex trafficking, domestic violence and sexual assault.

In early 2018, I was raped in my South Reno home. An Ivy League-educated man held me down by my throat and raped me after I refused to have sex with him without a condom. When he finished, I grabbed my gun, ran out of my home and called 911. The police caught him when he was on foot blocks from my home. They took me to the station for questioning and a sex assault examination; a rape kit was also prepared. I posted on social media that I had been raped in order to immediately establish a public record that it was not a "he said, she said"-type situation.

The next day, I began to receive support from Legislature members. Senator Spearman called me repeatedly to ask if I was okay, and she started taking notes. From the moment I walked into the Office of the District Attorney, Washoe County, where I was told my alleged rapist would be freed because I was not the—quote, unquote—perfect victim, I have had horrific experiences. As victimized as I was by my alleged rapist, I felt victimized ten times over by my experience with the State as a reporting rape victim. If I am ever again raped in Nevada, I will not report it.

Section 3 of S.B. 368 addresses advocate confidentiality, ensuring communication is confidential and not subject to discovery proceedings. I rely on victim advocates for everything; they are essentially my priests. It was terrifying that the district attorney questioning me about my rape began to berate me because I had not reported my previous rape in Washington, D.C. He threatened me with how I would respond if a judge ordered me to divulge my prior rapist's identity and details of that assault to the Washoe County court.

When I protested that that was illegal, the district attorney asked if it meant losing my current rape case or giving the details of my first rape, what would I do?

I explained that I did not plan on ending up on the local news. If we learned anything from the testimony of Dr. Christine Blasey Ford against U.S. Supreme Court Justice Brett Kavanaugh, it is that those who speak up against the powerful are dragged through the mud in the national media and cannot return home safely at the end of the day.

Knowing that my alleged rapist's identity is known to my current and former advocates, I am terrified that the district attorney who is supposed to represent me and the residents of Washoe County is threatening me. Victims' confidence in their advocates is as sacred as any religion, and rape details and records should be held in strictest confidence.

Sections 13 through 16 of S.B. 368 are the Sexual Assault Victims' DNA Bill of Rights. I worked on legislation in the Seventy-ninth Legislative Session to address the State's sexual assault kit backlog and hasten the DNA testing turnaround. However, when it came to my own sexual assault kit, it took intervention by attorney Patty Cafferata and former Attorney General Adam Laxalt to track down the kit a year after the attack. I was told that even if it had been sent to the lab, I was not entitled to the results, even if there were a Combined DNA Index System (CODIS) hit.

As an expert in sexual violence, I know my alleged rapist has other victims. He is a man who uses strangulation to control you and calmly asks questions while raping you like, "Am I hurting you? Are you scared of me? Have you been raped before? You were raped as a kid?" When I said, "More times than I can count," he said, "That sucks," and then he thrust himself deeper inside of me. These are not things a man calmly says the first time he rapes.

Even though I tried to dig my nails into his back to get DNA under them and he left his DNA in my body, I am not entitled to know if there is a hit in CODIS. Now that the Washoe County District Attorney has freed him, my alleged rapist will attack other women. Hell, he even told me he is going to rape me again and bring a friend. Why can I not know the details of rape kit results? We need to fix that.

Section 17 addresses extending protection orders for sexual assault victims from 1 to 5 years. At the end of the Legislative Session, I am moving to Las Vegas. I try to spin the move with happy-go-lucky reasons like expanding my business, going back to school and blah-blah-blah. However, the truth is the protection order against my alleged rapist expired January 16. I began the process of obtaining a new protection order but was told by the court it was useless. Although my assailant had told me he would rape me again and bring a friend, because that had not happened within the last 365 days, I did not qualify for a new order under NRS.

Although the State had agreed that I was in an unsafe situation and will pay to relocate me through the Victims of Crime Program, I cannot live someplace that will not offer me basic protection. I was prepared to leave the State until Senator Spearman connected me to an opportunity in Las Vegas, where I can feel safer—not safer but safe. Rape is the crime right below murder on the trauma scale. Less than 1 percent of rapists will go to jail, but 1 year is all the protection I can get against mine. Five years of protection is not too much to ask.

Section 27 of S.B. 368 provides that while an alleged assailant is in custody for rape, he is required to be tested for HIV/AIDS or other diseases transmitted by blood. Because of confusion over NRS covering DUIs, some sheriffs and police departments are not requiring suspects to honor NRS if they refuse to have their blood tested. In 2017, Washoe County had 168 arrests for sexual assault. Three alleged rapists, including mine, refused to be tested and were not forced to submit to the required blood tests. Why else would an Ivy League-educated man refuse to submit to an HIV/AIDS test after allegedly raping a woman without a condom? I spent a year testing daily for HIV/AIDS, despite my panic and anxiety attacks. I spent a year, sometimes waking up at 3:00 a.m. and driving to CVS to buy $40 home testing kits, waiting for the ticking time bomb in my head to explode. I could not eat or breathe while waiting for the death sentence of HIV/AIDS to hit.

We need to clarify NRS so agencies and departments know who can refuse testing. Suspects have already been arrested for rape; why should they be allowed to continue to subject their victims to a possible death sentence for a year?

DANIELE STAPLE (Executive Director, The Rape Crisis Center, Las Vegas):
Section 26 of S.B. 368 pertains to group homes for adults with physical, developmental or psychological disabilities. This population segment is one of the most vulnerable to sexual abuse. Recently, comatose residents have been impregnated by staff. Residents are often isolated, lack understanding of their rights or may be unable to physically thwart abuse attempts. Assuring that facility staff be required to have protocol training and that residents and their families have resources and information to alert them to behavioral red flags would go a long way and is a good start to controlling the problem. There is virtually no protection for residents.

Section 6 changes the statute of limitations for reporting trafficking and sexual assault. Sexual violence survivors must feel that whenever they become aware of their assault, no matter when they report it or whenever they may discover evidence of the crime, they may seek justice. Nothing in section 6 changes the burden of proof or makes it easier to prosecute sexual assault cases. It merely gives survivors the opportunity to seek justice at any time afterward. Survivors deal with these crimes' impact for the rest of their lives, during which time they should have the opportunity to seek justice.

We know that in the best of cases, which are tried immediately after an assault, prosecution is still difficult, with the burden of proof falling on victims. Victim-blaming continues as part of the process, even in best-case scenarios. Prosecuting a case 5, 15 or 35 years later significantly increases its difficulties. However, it is no more difficult or less reassuring to victims to be able to prosecute a case 19 years after an assault versus 21 years and 6 months. Perpetrators rely on power and control differentials to prey upon victims. By having an arbitrary number attached to the statute of limitations, we are giving perpetrators more power than their victims.

MELISSA HOLLAND (Executive Director, Awaken):
Awaken is an anti-sex trafficking organization based in northern Nevada. I am a marriage and family therapist. In 2011, I was part of a diversion group with Reno Municipal Court Judge Jim Van Winkle, who had set up a court for women arrested for solicitation. I began to recognize how much more complicated the issue is and how it needs more than just one avenue to be addressed.

Human trafficking is the fastest-growing criminal enterprise worldwide. It is not a "somewhere out there"-type issue. I am often asked, "How bad is it here?" We fail to grasp its prevalence. We reached out to Creighton University in Omaha, Nebraska, which has a human trafficking initiative that collects prevalence data. We commissioned the school to study trafficking in Nevada and compare it to the rest of the Country.

Nevada has the highest rate of illegal sex trading, 63 percent higher than the next-highest state, New York, and 50 percent higher than California. The data is adjusted for population, but human trafficking is rampant in our State. A conservative estimate for any given year is 20,000 women and children are sold for illegal sex purposes.

At its root, sex trafficking is caused by male demand for prostitutes. When demand increases, traffickers increase the supply. How many untold thousands of sex buyers are in Nevada? There are two deterrents to reduce demand: the fear of getting caught buying sex and actually getting caught.

In Nevada, the likelihood you will get caught buying sex is incredibly low. Traffickers' marketing strategy is high rewards, low risk. Male prisoners have a code, "If someone's willing to buy it, I'm gonna have it to sell." Our State is hard on drug offenders but soft on the buying and selling of women and children. Fear of getting caught is a strong deterrent. Johns do not want their loved ones and family to know they buy sex or to be perceived as "that guy."

Demand Abolition asked more than 8,000 men about their sex-buying experiences. The market is saturated with regular, high-frequency buyers. Typically, their annual income is $100,000-plus, and they are young, white, upper-class males. Many convince themselves that women enjoy being trafficked, believing that if they do not have sex, they will spontaneously combust or are just looking for a little variety.

Some men even see themselves as saviors, reasoning, "Now that I've paid her for sex, she can feed her kids and buy them shoes." One john admitted to hiring a street prostitute because she "looked in a bad way." Another said, "If women could give full satisfaction to their husbands and boyfriends, then men wouldn't have to go to prostitutes." Another john said, "If I wasn't able to have sex with a prostitute and was frustrated, I might have to go out and attack a real woman."

There are dehumanization and privilege aspects to this crime, and there is always a power differential. Johns predominantly have more privilege and resources to extract sex from women with less privilege, resources and opportunities. Money becomes the coercive factor when a woman who would not normally have sex with you suddenly does it. Victims of violent acts of rape and sex assault are coerced into consent by the fact of purchase. It is a rebranding.

Johns are the main perpetrators of homicide and other violent crimes toward prostituted women. In 2017, 50 percent to 100 percent of homicides of prostituted women in the Nation were committed by buyers. Nevada has the second-highest rate of women murdered by men and the seventh-highest rate of sexual assault.

Seventy-one percent of prostitutes have been physically assaulted, 60 to 75 percent sexually assaulted, 68 percent experienced posttraumatic stress disorder at the same levels as combat veterans and torture victims and 89 percent wish to escape prostitution. This is not the myth that sex buyers believe in.

Knowing the deterrents that reduce the rate of sex trafficking, you would think we would focus on the demand aspect. That was tried in the Seventy-ninth Session, but the proposed legislation did not work. It increased penalties for sex buyers and offered money from johns' penalties to law enforcement to enact stings on them. In 2018, LVMPD had 2,118 solicitation arrests, of which just 32 were sex buyers. Reduce the demand, and you reduce the supply.

A significant improvement proposed in section 11 of S.B. 368 is to shift police time and resources away from the women and reconsider them as victims instead of criminals. The focus would be on arresting buyers. Men can easily be deterred from such activities if they fear their wives, children, bosses and coworkers know what they are up to.

In 1999, with a 50 percent female parliament, Sweden established the "Nordic Model." Legislators looked at prostitution as violence against women. The Model addresses the demand for prostitution head-on by criminalizing sex buying and holding accountable traffickers who profit from it. It also creates a shift in how prostitutes are treated. Most are pulled into the industry by a

desperate need for money, but the fact is almost no one gets out of poverty through prostitution. A history of childhood physical or sexual abuse is a commonplace among prostitutes.

The Nordic Model and the bill's section 11 offers prostitutes assistance and support services to help them build a sustainable alternative life. The Model has reduced the trafficking rate by half in Sweden, which now has the lowest illegal trafficking rate in the entire European Union. More and more countries are adopting the Nordic Model: Norway, Iceland, Ireland, Northern Ireland, Canada, France and Israel. In the United States, King County in Washington State and Cook County in Illinois have adopted the Model, focusing 100 percent on sex buyers, not on sellers.

SENATOR SPEARMAN:
Some people say they cannot remember what happened 20 years ago. In 1986, I was an Army captain when my senior officer propositioned me. He called me into his office and, with his hands gyrating under his desk, explained, "I could help your career" if I had sex with him. I still see that pervert and exactly what he was doing, and I feel what I felt then. I never told anyone about the proposition until I was promoted to lieutenant colonel because I feared my career would end. As a victim, you remember what happened 20 years ago and exactly what the perpetrator was trying to do to you.

You will also hear there is some type of relationship between the abuser and victim, and the person who acted on his or her sexual impulses was given "signals"—untrue. I do not know how many people do not understand two letters that say, "I ain't with this": N and O. If you hear the word no or see physical actions that tell you no, you know it is time to desist.

You may also hear that the sentences proposed in S.B. 368 are too long and will ruin people's lives. Well, guess what: victims are serving life sentences from which they cannot get out. Ms. Mull will tell you what it was like to be trafficked at the age of 13.

For many Legislators, the bill may seem to be just a panacea about which they have extraneous questions. Every time there is a major event in Las Vegas, human traffickers are ready to supply victims for sex buyers. In Clark County, the people most trafficked are homeless children with parents who could not accept who the youths were when they came out as gay, lesbian or transgender

and then kicked them out. Many trafficked women trying to escape domestic violence think they are working reputable jobs, but suddenly they are trapped. Most trafficked women and children in Clark County are people of color. There is just one way that we can show our determination to protect children, women and anyone who is a victim of sexual assault.

SENATOR PICKARD:
When we juxtapose today's testimony with the hearing on S.B. 413 and testimony in support of prostitution generally, from a legal standpoint, when we look at section 19, why are we presuming that all of the people therein are trafficked?

SENATE BILL 413: Prohibits prostitution in the State of Nevada (BDR 20-110)

Why would we cut them off from prosecution at the age of 30?

SENATOR SPEARMAN:
We have to start somewhere. Most data show that the age of 30 and below is when the preponderance of trafficking happens.

SENATOR PICKARD:
We have spent a lot of time over the past few Sessions discussing victims' rights and Marsy's Law. As we look at balancing the right of victims to know what is going on in their cases, section 11 adds language stating its provisions are subject to sufficient resources. We do not limit people's rights based on the State's ability to pay. Why does vindication of victims' rights depend on that?

SENATOR SPEARMAN:
I would hope there is never a limit on resources for victims. However, I know that when someone does not want to do something, any excuse will do. Many times when people see something like this, they ask what the fiscal note is.

SENATOR PICKARD:
Certainly, but I am talking about the flip side of that coin. If an agency is given a financial out, it will take it.

MS. MULL:
I was trying to avoid the fiscal note issue in order to move the bill through.

SENATOR PICKARD:
Under section 4, a lot of time is spent ascertaining if victims are children. The proposed amendment to S.B. 368, Exhibit E, addresses only sections 19 and 21. Will the amendment make conforming changes throughout the bill?

SENATOR SPEARMAN:
Yes.

SONDRA COSGROVE (President, League of Women Voters of Nevada):
You have my letter of support (Exhibit F) for S.B. 368. The League of Women Voters of Nevada is particularly supportive of section 15, which addresses rape kits. For years in Clark County, thousands of kits sat untested while sexual assaulters continued to offend. This denied justice to victims and put the entire community at risk. The belief that sexual assaults are not crimes due to the party culture of Las Vegas has finally begun to dissipate.

By requiring regular status updates on testing of rape kits, the bill sends a clear message that the Legislature now views sexual assault as serious and victims as valuable members of society who need as much support as we can provide.

SARA CHOLHAGIAN (Dignity Health-St. Rose Dominican):
Dignity Health-St. Rose Dominican and seven acute-care hospitals in southern Nevada formally support S.B. 368. Human trafficking is a community health issue to which Dignity dedicates resources. Our providers witness the suffering of trafficking victims in emergency departments and birthing centers who are looking for compassionate care and a way forward. Human trafficking is a global issue. Dignity has invested more than $1 million to develop and implement its survivor-led and informed Human Trafficking Response Program.

BARBARA JONES:
I must support S.B. 368. Get on board with the bill's sponsors and victims and pass this legislation.

MARLENE LOCKARD (Nevada Women's Lobby):
Senate Bill 368 is essential and will go a long way toward closing many legal gaps in the entire arena. We appreciate that the victims fund will be transferred from the Department of Administration to DHHS, which is a more appropriate placement.

SERENA EVANS (Nevada Coalition to End Domestic and Sexual Violence):
Senate Bill 368's section 1 will abolish the statute of limitations for reporting sexual assault. Sixty-three percent of sexual assaults are not reported for many reasons, including fear of retaliation and the reporting system and the emotional trauma accompanying assaults. Abolishing the statute of limitations will allow survivors the option to emotionally and physically heal before participating in the criminal justice procedure.

As for section 15, if a sexual assault survivor obtains a forensic examination, he or she deserves access to the results. That information will aid the healing process and reduce a victim's sense of isolation. Section 17 increases protection orders to 5 years. Victims fear for their lives and safety, in some cases for more than a single year. Rather than requiring that victims complete the protection renewal process annually, increasing the time frame offers a safer and more effective protection process.

MR. CALLAWAY:
A major concern of LVMPD is the bill's section 19, which decriminalizes prostitution for anyone under age 25. Typically, anytime we make a vice arrest, the suspect is screened by our Vice Unit to determine what resources are available to him or her. After suspects have been helped to leave that lifestyle, their arrest records are sealed or expunged. The problem is if it is not illegal on the front end, there is no way to get prostitutes out of that environment. Vice detectives encountered a young girl suspected of engaging in prostitution. They took her to a services center, but she ran back to her pimp. That is why prostitution must remain a criminal act.

Assembly Bill No. 97 of the 79th Session created a Statewide system to track child sexual assault victims and victim notification, which will begin later this year. We are concerned that some of the language in section 15 conflicts with last Session's bill. The majority of the rest of S.B. 368 has the full support of the LVMPD.

VICE CHAIR HARRIS:
In your example of the young woman running back to her pimp, I need to understand how the process works. Why was the pimp still on the street? Why was an investigation not begun to arrest him? I am worried that the issue was the girl, while he was still out on the street.

MR. JONES:
The defendant—the pimp—was in the Clark County Detention Center. The juvenile left her services facility, went to the Detention Center and then to the defendant's family. Phone calls were made between the victim and the defendant in which she apologized for talking to the police, and he berated her. Ultimately, the victim tried to work with the defendant's family to bail him out of jail. There was an investigation, but when the victim goes on the run, we cannot prosecute.

VICE CHAIR HARRIS:
Is the answer that she also be locked up?

MR. JONES:
This is not an easy issue. In Clark County, we have worked for almost ten years to procure funds for a safe house outside of the Juvenile Detention Center for victims of sex trafficking. We need to get them away from outside influences. It takes a while to remove the many layers of trauma caused by trafficking. Victims' instinct to run is often so great it is hard to get them to stay anywhere long enough for us to intervene by offering services.

VICE CHAIR HARRIS:
Ensuring that prostitution is still a crime for those under age 25 will not remove the issue's complexity; in fact, it seems to add to it.

MR. JONES:
If the Office of the District Attorney, Clark County, lacks jurisdiction, we cannot intervene because that must be done through criminalization; in this case it was that a juvenile was involved. Under NRS 62C.240, juvenile courts may maintain jurisdiction over sex trafficking victims without an adjudication of delinquency. For lack of a better word, we do not officially convict the juveniles. The *Nevada Revised Statutes* give the court authority over children to do whatever it thinks is in their best interest to get them out of their situations while we work through their trauma.

SENATOR HANSEN:
We have heard statistics that indicate law enforcers are not aggressively going after johns. That is the true solution to the problem we are addressing.

MR. CALLAWAY:
The Vice Unit of LVMPD tells me it is much more difficult to do a john sting operation than a traditional solicitation one. Girls typically flag down motorists on The Strip and on Tropicana Boulevard. An undercover plainclothes officer will go out in an unmarked vehicle on a weekend night. When a girl waves him over and offers sex, he takes her into custody and then we try to funnel her into proper services.

In the johns scenario, we must do a reverse sting. We must have a female officer willing to play a sex worker after receiving a lot of safety training. We put her out on the street for the john to solicit her. Plainclothes officers monitoring the exchange then take the john into custody. Johns are very street smart and can smell a cop from a mile away. If they see a new woman on the street, they figure she is an officer. We are out doing johns enforcement, but our ability to make arrests is much less than our ability to directly encounter the girls and try to get them out of that lifestyle.

SENATOR HANSEN:
I remember when newspapers published photos of johns arrested during sting operations in the Reno area. Why has that been discontinued if a major deterrent is fear of getting caught and exposed to the public?

MR. CALLAWAY:
I do not know if anything in NRS prohibits agencies from releasing that information to newspapers. I am not opposed to the concept. When I was a beat cop on The Strip, I saw a lot of johns pick up girls and take them to hotel rooms where the men were "trick-rolled" or pimps showed up and beat up and robbed them. The johns were reluctant to report those crimes because they do not want their Kansas families to find out.

SENATOR HANSEN:
Going after johns will decrease the demand. It is ironic that we have conventioneers coming here while we advertise, "What happens in Vegas, stays in Vegas," which clearly implies that what you cannot do in your Indiana hometown, you can do in Nevada.

SENATOR SCHEIBLE:
I am concerned that the reason we do stings in one direction—to catch women soliciting sex and not the men buying it—is because catching johns is too hard.

What is LVMPD doing to increase the number of female officers in Vice or to develop other techniques to catch more johns than prostitutes?

MR. CALLAWAY:
The goal of Vice is not just to arrest the girls. I would encourage the Committee members to do weekend ride-alongs with Vice officers to see firsthand exactly what they are dealing with in hotels and on streets and The Strip.

We are having a difficult time just recruiting women to become officers. They must do time on the beat before getting Detective Bureau assignments like acting as Vice decoys. For a while, LVMPD had a program in which women do not have to be assigned to Vice to be trained in undercover operations. The sting is extremely dangerous because the officer must get into the john's car. Four or five other officers, including a nearby unmarked vehicle, must watch the female officer to ensure she is safe and still in sight. If the solicitation is accepted, they must arrest the john. Doing a john operation is much more involved than having male officers be solicited on the street.

SENATOR SCHEIBLE:
If it is so incredibly dangerous for a female officer to get into the car with a man soliciting sex, why are we not more panicked about street women getting into cars with johns about to pay them for sex?

MR. CALLAWAY:
I agree that it is super dangerous for anyone to get into that car. That is why LVMPD is trying to funnel girls into services and out of that lifestyle. If it is not a crime for women to flag down cars and we only focus on johns, we take away a vital piece of the puzzle to change lifestyles.

VICE CHAIR HARRIS:
Are Vice officers making an effort to get women into services without arresting them through stings?

MR. CALLAWAY:
The majority of women doing soliciting are uncooperative with LVMPD for a variety of reasons: they are afraid of their pimps, do not trust law enforcement, do not want help. It is not like an officer can say, "Hey, about we get you some help?" and the woman will do what he says.

VICE CHAIR HARRIS:
Is that because LVMPD always arrests them?

MR. CALLAWAY:
It is a carrot-and-the-stick type of thing. We cannot force someone to get help. If they are afraid of their pimp or trafficker and we cannot force them into treatment, there must be a crime. It is analogous to decriminalizing drug possession. I had a relative addicted to methamphetamine. The only way he got help was being arrested and faced with a felony that forced him to get help and treatment.

It is unfortunate that we have to have an environment like that to force people to get help. However, the sex worker lifestyle and being under the control of a pimp is just as devastating as addiction. We talk about Stockholm syndrome and how people say they are in love with their traffickers and will do anything to help them. It is a complex and frustrating issue.

VICE CHAIR HARRIS:
I thought we were trying to move away from that drug rehabilitation framework because it is not working. Maybe we should learn about what we learned in the drug space and apply it here.

MR. JONES:
There are many parts of S.B. 368 that the Nevada District Attorneys Association appreciates, including lifting the statute of limitations for civil and criminal actions, increasing the ceiling option for juvenile victims of trafficking and making it illegal for an officer to have sexual contact with a person in custody. Our concern centers on section 19.

I do not want the Committee to think that law enforcement is saying that what we do now is perfect and there is nothing we can do to make it better. Considering our resources, we are doing the best we can to stem an extremely complicated problem. If Legislators dedicated a lot more money to the problem, we would have other options available.

SENATOR PICKARD:
As we talk about all the different angles from which we approach trafficking, from your experience of dealing with it from the interdiction side, does legalized

prostitution exacerbate the problem? Many johns come to Las Vegas under the misconception that prostitution is legal throughout the State.

MR. JONES:
There is an arguable and growing school of thought that takes that position. Personally, I cannot answer your question.

AMY COFFEE (Nevada Attorneys for Criminal Justice):
Sections 6, 7 and 8 remove the statute of limitations not just for sexual assault but for a whole list of sex crimes under NRS. I do not believe that if someone is truly traumatized, he or she will never forget its cause. The problem is that if you abolish the statute of limitations, you confront the balance of serving justice and due process versus serving victims.

Under NRS, a person can be convicted solely on testimony with no evidence. Some truly traumatized victims may not get their day in court until a long time after the incident, not every victim might be pure and honest in his or her testimony. A victim may not have the best motive for instituting a civil suit 20, 30, 40 years later, Perhaps the victim stands to gain financially or the motive is political. It is extremely difficult to defend a 40-year-old case and round up witnesses and evidence, especially if there could be a false account of events. That is the purpose of statutes of limitations.

If the Committee wants to abolish the statute of limitations just for sexual assault, I would have fewer problems with that versus including a laundry list of other sexual offenses. Going from the current time period of three to five years to none could create some serious due process issues and wrongful convictions.

Section 11 of S.B. 368 will add an increased penalty for a sexual offense by a "person in a position of authority." If it is a felony, they would have to serve a mandatory consecutive 1 to 20 years; for gross misdemeanor, it is a mandatory consecutive sentence of up to 1 year to 6 months. Nevada's sex crime sentences are among the highest in the Nation, including many life sentences. Therefore, as a policy, additional penalties are unnecessary.

The definition of "person in a position of authority" in section 11, subsection 5, paragraph (a) includes a description of every single defendant I have had in 20 years as a public defender. The only person missing from the list is "complete stranger." The definition is so broad it will amount to mandatory

consecutive sentences on top of the already high sentences the State imposes. Increased sentences will not result in better deterrence and will cause unnecessary prison and jail sentences.

Section 18 increases the penalty for possession of child pornography. That is a State and federal offense because it usually involves the internet. Federal court has a complicated sentencing scheme, so the State does not have to include its penalties. If you use a minor in production of pornography, that already brings a life sentence. Section 18 covers just the crime of possession for people who may inadvertently download an image or two up to those who are seriously into pornography. For policy reasons, we do not need to increase the penalties.

In section 19, the crimes are better addressed through law enforcement diversion programs, not policy changes. As we have heard, in Clark County when a juvenile prostitute is arrested, he or she is diverted into services, and the arrest does not go on his or her record. In a perfect world, we would have services for juveniles and adults involving some sort of residential component. Giving someone a place to live versus having him or her go back to the pimp is key to getting people out of this lifestyle. Section 19 will not fix the problem. Deeming people victims under Marsy's Law and other victim statutes is one thing, but people cannot be forced into services. This policy issue can be addressed in a different way through legislating that any sex worker under the age of 30 is a victim.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):

There are portions of S.B. 368 that I really like: better handling of sexual assault kits, decriminalization of prostitution, sealing and expunging of records, penalizing officers who abuse the power of authority of people in custody. The Office of the Public Defender, Clark County, has the same concerns about the statute of limitations as does Ms. Coffee. Memories fade, and time erodes the likelihood of a fair trial. The job of the criminal justice system is to protect the innocent and punish the guilty. Allegations must come out in a timely manner so fair trials and due process can be had.

Many sections of S.B. 368 enhance penalties. If Senator Spearman had said other states have done this and it stopped the activities therein, that would be a powerful argument. However, that never happens. It is always, "We have an idea to increase penalties because we think it will stop it." Nevada continues to

be No. 1 on the bad list of things, and we keep hitting crimes with the same hammer: increased penalties. A fiscal note on a bill like this is its death knell.

Why do we not take the hard road and look at doing an Interim study, asking what other states are doing, what are we doing in the realm of sex trafficking, what can we do to improve victim services, why do we not help Mr. Jones and the State build a safe house instead of housing young women in detention facilities? Coming back with the same old hammer and saw of increased penalties will not fix our problem. Why not look deeply at the issue and decide on actions before we make policy decisions and just pull more numbers out of a hat?

MS. BERTSCHY:
The Office of the Public Defender, Washoe County, echoes the testimony of Ms. Coffee and Mr. Piro. Senate Bill 368 is designed to try to help individuals; however, parts of it miss tackling the root of the issue: lack of resources. That is concerning because we need to do something different, not just criminalizing or locking up individuals. Increased penalties have never been shown to have an impact. We need to instead focus on the victims. It is concerning that when my defendant is a victim, I am the one who has to reach out to different agencies for resources and support services. Getting people out of the horrors of trafficking should be our focus.

Section 6 includes no statute of limitations for a variety of sex offenses. Assembly Bill No. 212 of the 78th Session tried to increase the statute of limitations to 20 years; I disagree with the belief that the number was pulled out of thin air. I echo Mr. Piro's reasons for why statutes of limitation are important.

Section 27 requires arrestees to be tested for sexually transmitted diseases. At that point, the person is still presumed innocent and has constitutional rights, which the section will erode.

MS. WELBORN:
The American Civil Liberties Union of Nevada (ACLUN) agrees with its colleagues from the defense bar about the provisions they oppose. We fully support section 4 and the concept of decriminalizing prostitution, especially if the proposed amendments, Exhibit E, are adopted.

The language deeming anyone at the age of 25 and under as a victim is part of the Nordic Model, from which significant problems have arisen. Amnesty International and the World Health Organization have called for full decriminalization of all aspects of consensual sex work for both sellers and buyers. An Amnesty International study found that under the Model, sex workers remain at high risk of violence and abuse. Only 16 percent of women reported incidents of violence after the Model was adopted. After Ireland adopted the Model, crimes against sex workers more than doubled, from 4,000 to 10,900 incidents within a 2-year period. There is a lot we can learn from international studies by reputable organizations as we approach trafficking. I hesitate to say we oppose section 4 because of its simple language change, which we can work on.

SENATOR HANSEN:
I worked on A.B. No. 212 of the 78th Session. We came up with the 20-year limitation because of the Sixth Amendment, the right to a speedy trial. At first, we wanted to abolish the statute of limitations but negotiated it down to 20 years. I assume ACLUN would agree that the Sixth Amendment should be a critical component of the bill, along with the right to a trial and the presumption of innocence.

MS. WELBORN:
Absolutely. I concur with testimony from Ms. Coffee, Mr. Piro and Ms. Bertschy. If prosecutors are not looking at evidence with high reliability and must bring up evidence from much earlier in someone's life, that has significant constitutional consequences.

SENATOR HANSEN:
Another solution that came up in the Seventy-eighth Session to reduce the number of johns was to put arrestees' photos in newspapers. What would be the ACLUN's position on that since the men are technically not guilty?

MS. WELBORN:
Obviously, we have a lot of concerns about that kind of publicity for privacy reasons.

SENATOR HANSEN:
No one here is from the Las Vegas Convention and Visitors Authority. Is there an effort being made by that organization to aggressively let conventioneers

know prostitution is illegal in Clark County? If the business community were serious about curbing the problem, that could help.

COREY SOLFERINO (Washoe County Sheriff's Office):
Part of the campaign platform of recently elected Washoe County Sheriff Darin Balaam was to combat sex trafficking in northern Nevada and create a regional task force concerning it. The Washoe County Sheriff's Office has helped create legislation to hold officers and people in power accountable to the provisions in sections 11 and 20 of S.B. 368.

Section 19 is problematic for us to provide needed services to prostitutes. We and the local nonprofits with which we work, such as Awaken or Safe Embrace, know those support services can be paramount for people leaving our detention centers. We listen to jailhouse conversations and hear similar stories to those of Mr. Callaway and Mr. Jones. People make arrangements while in custody to get right back into the trafficking lifestyle. I am working with the sheriff's public information officer to find out why we are no longer releasing johns' photos for publication.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):
I agree with other law enforcers' testimony on S.B. 368.

ALICE LITTLE:
I am a legal sex worker in Lyon County. We were not consulted when S.B. 368 was being drafted. Generally, sex workers support decriminalization of prostitution; however, we are not victims. We are frustrated with the frequent characterization of ourselves as victimized and the use of victimizing language. Framing us as victims inherently frames johns as perpetrators. Consensual sex work exists in this State, including in Lyon County.

Senate Bill 368 frames all sex workers as victims. Support programs discussed today do not specify what that entails. As such, they could revictimize women and cause serious psychological issues. It is important that sex workers are consulted whenever legislation concerns them so that how we want to be viewed is part of the equation.

SENATOR SCHEIBLE:
Do you see a need for an avenue for women involved in illegal sex trafficking to transition into legal sex work?

MS. LITTLE:
That education should be provided. There is an opportunity for illegal sex workers to enter the legal profession. That should be included in S.B. 368.

ROSS E. ARMSTRONG (Administrator, Division of Child and Family Services, Department of Health and Human Services):
The Division of Child and Family Services, DHHS, is neutral on S.B. 368. Section 22 transfers the Victims of Crime Act of 1984 compensation program from the Department of Administration to DHHS. There are two federal crime victim acts, and the Division of Child and Family Services manages the assistance program with funds from nonprofit victims' services agencies. The Fund for the Compensation of Victims of Crime is specifically for reimbursing people for costs associated with becoming a victim. The bill will provide an opportunity to link victims with a menu of services within DHHS.

DENNIS A. PEREA (Deputy Director, Department of Employment, Training and Rehabilitation):
Senate Bill 368 is clearly consistent with the mission of the Department of Employment, Training and Rehabilitation's workforce development system. We should not have operational issues with implementing its provisions.

SENATOR SPEARMAN:
Although some may not consider themselves victims, I have heard from many who do. It is your prerogative to not consider yourself a victim. When I was stationed in Korea, many servicemen went off base to engage illegal prostitutes. The general put out a statement, "If you're caught, your career's over." If penalties are increased, people will not be victimized. We have heard about how dangerous it is for improperly trained female decoys.

For people who want to do sex work and do not consider themselves victims, I am not after you. Senate Bill 368 is for people who have been trapped. We have heard from people who have been trapped for years, and the only reason they came forward—I am sorry, I keep using "trapped," when it really should be enslaved. For people who have been enslaved and want to get out, we should offer an opportunity to leave.

As far as a lack of resources, we can provide money, but it usually involves the "T-word." Many folks start getting queasy when you talk about taxes.

CHAIR CANNIZZARO:
We will close the hearing on S.B. 368 and open the hearing on S.B. 427.

SENATE BILL 427: Revises provisions relating to business entities. (BDR 7-306)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):
Senate Bill 427 makes various changes relating to business entities.

ROBERT C. KIM (Business Law Section, Executive Committee, State Bar of Nevada):
Senate Bill 427 was developed by the Business Law Section, Executive Committee, State Bar of Nevada, and has been vetted by the State Bar Board of Governors. The Office of the Secretary of State has a proposed amendment (Exhibit G) for sections 1 and 29. Section 29 would be removed entirely because we can accomplish our desired goal through amending the *Nevada Administrative Code*. Clarification in section 1 was needed regarding resignations of registered agents.

Sections 2 through 5 deal with inspection of records. We needed to clarify who has the right to request records and which records can be requested and to reiterate the mechanics of that process. The right to request records is reserved for regular stockholders, not for beneficial owners of shares bought through brokerage accounts. Requests must be made for proper purposes, and the scope of the requested documents must be something the corporation is able to deliver. These changes would bring NRS more in line with standards of corporate law like the Delaware General Corporation Law.

Section 8 relates to the ability of a board of directors to remove a member. Nevada has a high bar relating to removal, requiring a two-thirds vote. The gaming industry is premised upon suitability of its management. A director may be found unsuitable by regulatory authorities so needs to be removed. Usually when that occurs, the person voluntarily resigns. However, when a director refuses to cooperate, section 8 can be invoked.

Receivership statutes relating to corporations have not received much attention; one of the statutes has not been amended since 1931. The bill would amend NRS 78.650 on the corporate side because it includes concepts already in other NRS receivership sections, specifically NRS 78.347 and NRS 78.630. We are clarifying NRS 78.650, which is normally invoked in a mismanagement

situation. In order to maintain an action under NRS 78.650, it must involve a stockholder of ownership of 10 percent or more of a corporation, which must be maintained throughout the entirety of the action.

The bulk of sections 10 through 28 is designed to import corporate receivership statutes as we propose to amend and implement them as per NRS 86, the LLC statutes. That means courts do not have to translate concepts between NRS, especially since LLCs are the predominant entities for people doing business.

SENATOR PICKARD:
In section 8, subsection 8 of S.B. 427, a court of competent jurisdiction requires a person to "cease to be a director." Is that consistent with NRS specifying a court has the jurisdiction to modify a director agreement? Or does the section merely provide that a court should determine an agreement should be modified? Where is the jurisdiction to change an employment contract under these circumstances?

MR. KIM:
We discussed what scope would be necessary to remove a director on grounds other than a two-thirds vote. There may be instances in which it is appropriate to include the courts. Gaming regulators have that jurisdiction and have invoked it many times. Including a court of competent jurisdiction could allow a corporation to bring an action to address the situation before it becomes too disruptive to maintain. In extreme situations, I do not anticipate section 8 being used to grant that remedy without proper deliberation or purpose.

SENATOR PICKARD:
I understand that JCB of Las Vegas specifies in its licensing agreement that it has the ability to revoke directors' licenses. Is it the Bar's contention that courts would have the jurisdiction to make that a requirement, even though it modifies a contract in the absence of a group creative director action?

MR. KIM:
I cannot see a court mandating that action. We thought such an extreme remedy was appropriate given the suitability dynamics of the gaming industry. It is a statute-of-last-resort proposal.

SENATOR PICKARD:
I was thinking in the context of a derivative action, not licensing in the gaming industry. Sections 11 through 28 call for extensive changes. What were the problems you saw, and how do the changes solve them?

MR. KIM:
The purpose of adopting a similar standard in the LLC context to that in the corporate context is the trend that LLCs have become the dominant organizational vehicle for small businesses, large companies and solo businesspeople. It makes sense to adopt standards so ownership and requirement terminology about members, managing members, voting rights and the right to receive profits speaks to LLC terms. The goal is use the LLC framework so differences in terminology, applications of standards relating to profit allocation, voting and other control elements unique to LLCs are captured.

SENATOR PICKARD:
Are we not imposing corporation-type rules on LLCs? Corporations often use LLCs as subentities. Are we now imposing upon noncomplex entities standards that may lead to an easing of piercing the corporate veil?

MR. KIM:
Courts receive actions for receiverships as they relate to LLCs, so the bill could give them some guidance. We hope the bill's provisions are interpreted in a way that respect the distinct form of LLCs versus corporations.

SENATOR PICKARD:
The bill is not intended to create corporate formalities that could lead to the veil-piercing argument.

SENATOR OHRENSCHALL:
In section 15, subsection 1, paragraph (b), new language on LLCs would allow receiverships to be imposed on managers "guilty of fraud or collusion or gross mismanagement." Would that finding of guilt be through a civil action or regulatory authority?

MR. KIM:
That would be a finding by the court in a civil context.

SCOTT W. ANDERSON (Chief Deputy, Office of the Secretary of State):
The Office of the Secretary of State is neutral on S.B. 427 with its proposed amendment, Exhibit G.

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VICE CHAIR HARRIS:
We will close the hearing on S.B. 427. Seeing no more business before the Senate Committee on Judiciary, we are adjourned at 12:11 p.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	6		Attendance Roster
S.B. 353	C	14	Senator James Ohrenschall	Article: "What They Don't Know Won't Hurt Them: Mothers' Legal Knowledge and Youth Re-offending"
S.B. 353	D	10	Senator James Ohrenschall	Innocence Project: "Recording of Custodial Interrogations Briefings Book"
S.B. 368	E	1	Senator Pat Spearman	Proposed Amendment
S.B. 368	F	1	Sondra Cosgrove	Written Testimony
S.B. 427	G	1	Robert C. Kim / Office of the Secretary of State	Proposed Amendment