MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eightieth Session
April 9, 2019

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:14 a.m. on Tuesday, April 9, 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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Stephen Stubbs
Mark Schifalacqua, Senior Assistant City Attorney, City of Henderson
Adam Cate, Nevada District Attorneys Association
Ryan Black, City of Las Vegas
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Holly Welborn, American Civil Liberties Union of Nevada
Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender, Washoe County

Lisa Rasmussen, Nevada Attorneys for Criminal Justice

CHAIR CANNIZZARO:
I will open the meeting by pulling Senate Bill (S.B.) 439 from the agenda as we have work to do on it.

SENATE BILL 439: Revises provisions relating to firearms. (BDR 15-926)

VICE CHAIR HARRIS:
I will open the hearing on S.B. 438.

SENATE BILL 438: Establishes the circumstances in which a confession by itself is sufficient to warrant the conviction of a defendant. (BDR 14-927)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No 6):
I am here to present S.B. 438 along with Stephen Stubbs. I will spend a brief moment going over the corpus delicti rule. Corpus delicti literally means "the bringing of the body." When we hear that phrase, we often think there must be a body in order to prove a murder. That is the most typical space in which we would hear this issue. You may have heard someone say, "There is no corpus, there is no body. How can you charge the crime?" However, Nevada law does not require an actual "bringing of the body" if you will. The corpus delicti rule focuses on whether there is circumstantial evidence showing there was criminal agency in the commission of a crime such that we can then rely upon confessions or statements of a defendant in order to prove it.

Nevada law is precise in this manner in that the corpus issue does not require prosecution to bring beyond a reasonable doubt the other evidence of a crime. What it simply means, and if you look at any of the caselaw that surrounds the issue of corpus delicti, is there has to be some indication there were nefarious circumstances surrounding the commission of a crime. This applies not just to murder cases but to every crime ever charged whether there is corpus.

Oftentimes, corpus is not an issue because there is evidence of a crime such as witness statements, video surveillance, forensic evidence and possibly proof of injury and a victim who is willing to testify. Some cases may lack such evidence. Whether a defendant's confession can be relied upon solely where there is the lack of evidence of a crime is a potential corpus issue.

Senate Bill 438 attempts to bring clarity to the corpus issue in certain circumstances where there are certain indicia of reliability for the defendant's statement such that the corpus rule should, technically, be satisfied.

I will walk through the language of the bill. Section 1 amends *Nevada Revised Statutes* (NRS) 175 to permit the admission of a confession made by a defendant without the same requirement of proof of criminal agency under certain circumstances. Specifically, that would be where a defendant is charged under NRS 179D.097, which is a definition of what constitutes a sexual offense. Driving under the influence, domestic violence or the abuse, neglect, exploitation, isolation or abandonment of an older or vulnerable person is also included under this section.

In addition, the defendant's statement must be made to a peace officer while the officer is acting in his or her official capacity, and the court must make a determination that there is sufficient evidence to establish the trustworthiness of the confession.

When a court looks at trustworthiness under S.B. 438, it must consider whether there is sufficient evidence of the truthfulness of portions of the confession, whether the defendant had the opportunity to commit the crime, the method of interrogation used and whether the defendant is a vulnerable person.

This is an attempt to narrowly tailor a bill to only be used in certain circumstances. We recognize, in these particular types of cases, there may be issues where public policy would ask for those statements to be admitted.

In speaking with both Vice Chair Harris and Mr. Stubbs, there may be some amendments that we will work on in the next couple of days to ensure the application of S.B. 438 is narrowly tailored so as not to allow for every case in which a confession or statement made by a defendant is a sole basis for conviction. The intent of this bill is meant to address specific circumstances.

STEPHEN STUBBS:
I am a civil rights and criminal defense attorney, which you might find a little strange on a bill such as this. Usually, criminal defense attorneys are on the other side of this bill, but I am also the attorney for the family of an infant—a one-year-old—sexual assault victim who had no idea what was happening to her. She cannot speak and, therefore, cannot testify.

The purpose of S.B. 438 is simple: to protect the most vulnerable while still safeguarding important civil rights. We need to do that carefully and well.

In May 2018, Willie Reyes, Jr. was a candidate to become a police officer with the Las Vegas Metropolitan Police Department (LVMPD). He passed all tests and interviews until his final interview, where he was hooked up to a polygraph. He was asked a series of questions including, "Have you ever abused a child?" That question elicited a confession in front of two LVMPD police officers. He confessed to digitally raping a one-year-old infant, while she cried, for sexual gratification.

At that time, the interviewers stopped the interview and asked Mr. Reyes to write down his confession. He did. However, we do not have a copy of that confession, as LVMPD has deemed it part of a human resource file and will only release it to other police officers.

Mr. Reyes was then referred to a detective. The detective met with Mr. Reyes, who once again confessed to, in his words, "poking at the privates,"—inserting his finger into an infant. He was careful not to cause trauma and to choose a victim who did not know what was happening and could not testify against him.

Under Nevada law, he cannot be prosecuted. Under Nevada's version of the corpus delicti rule, the confession itself is not enough for a conviction and is therefore inadmissible at trial.

To look in the face of the family and have them plead with me as their attorney saying, "This can't be the law. There is no way this can be the law," is heart-wrenching in the greatest sense of those words. They then found out this is not the law everywhere.

Starting 40 years ago in New York, 12 states have modified the corpus delicti rule under similar circumstances. This is not a red or blue—a Democratic or Republican—issue. The states that modified this rule are: New York, Texas, Florida, Massachusetts, Washington, Connecticut, Tennessee, Arizona, Kansas, Colorado, Oklahoma and Pennsylvania. Corpus delicti has left a gaping hole in our judicial system if a person can choose a victim who does not know what is going on or cannot testify and is careful enough not to leave a trauma, can confess to three police officers on two different occasions, write a written

confession and still be beyond the reaches of justice and the law. The legislators and judges of these states have recognized this.

Corpus delicti started in common law due, mainly, to tyrannical governments that were torturing victims into confessions. It had a different application later on. In the Wild West, people would brag about all of the people they killed, though there was no evidence anyone was actually killed. It was, in those circumstances, an important civil right. It is still important that we get this right and that we have justice. More importantly, the vulnerable must be protected from predators who choose their prey carefully and do not leave marks.

I cannot explain the trauma this has had on this victim's family. There are no words. All we can do is move forward and make sure people who confess under trustworthy circumstances to things so horrible no one would ever brag about can be held accountable for their crimes. The trustworthiness standard is what we have and is what this bill does. When a confession itself is trustworthy under the facts and circumstances Senator Cannizzaro presented, it can be used and is admissible in trial. A jury of the defendant's peers can then decide whether the charge has been proven beyond a reasonable doubt, and he or she can be held accountable.

SENATOR PICKARD:
When I first read this bill, I did not see the connection as the language is fairly broad. Now that I have made that connection, I understand the intent.

Is the denial of the statement's disclosure based on federal law such that the State cannot bring legislation to make those records available? What is the rationale for denying access to those records and the written confession?

SENATOR CANNIZZARO:
The corpus issue does not have anything to do with whether the statement is released; it is a separate issue that delves into another area of law. The issue with corpus is whether a statement is admissible in court. Whether a written confession is kept within a human resource record is not affected by this bill or the corpus delicti rule.

Neither Mr. Stubbs nor I can speak for the LVMPD as to its rationale. Assuming the statement that contains all of the elements that would establish the crime

had been released, there are no indicia a crime occurred without something more under Nevada law.

What Mr. Stubbs has elucidated, which is the impetus for this bill, is that in circumstances like this where a one-year-old child would not be able to walk into a courtroom and testify—or even remember this incident—and where the parents would not be aware unless there was an injury or someone observed it, there are other indicia that lend to the reliability of that statement. We know this individual had contact with this particular child during this particular time frame. We know there was a course of conduct wherein Mr. Reyes would have been alone with the child. We know certain other circumstantial evidence might be available to demonstrate this statement in and of itself was not made up. This bill would also look at where he gave the confession and whether other things lend to its reliability.

If there had been injury to the child or if someone had seen it, I do not think there would be a corpus issue. It then becomes an issue of fact for the jury as to whether they believe beyond a reasonable doubt a crime occurred. But those are two different things.

SENATOR PICKARD:
We heard the testimony and learned there is a piece of evidence that is probably pretty strong evidence. If we can get access, the statement comes in and can be brought before the court. As I understand it, because we cannot get the evidence, we cannot bring this statement. If that is not the case, then I do not understand the testimony.

MR. STUBBS:
We do not have that statement, however, the police have that statement. The detective has that statement. That statement would be able to be admissible in court. However, because it is from human resources and part of the hiring process, the police cannot release it to the family. When I said, "I don't have that statement," it is because the LVMPD would not release a human resource employment record to the family. However, it is evidence and it can be brought out in those court circumstances.

SENATOR PICKARD:
That makes sense.

SENATOR CANNIZZARO:
The larger issue is that, while the statement is technically admissible as long as it falls within the rules of evidence, in cases where there is a corpus issue, the statement itself, irrespective of whether it exists, is not admissible unless and until you can prove some sort of circumstantial evidence to demonstrate there is criminal agency involved. The statement may be independently admissible but—in terms of proving a crime in a criminal context—if there is a corpus issue in that no other evidence to demonstrate the body of the crime exists, the statement is inadmissible and cannot be used in order to convict somebody.

If I walked into this room and said, "I killed Bob Jones," I cannot be arrested and convicted based solely on that statement. There would have to be someone named Bob Jones and he would have to have existed in a certain way in which I would have had contact with him. Maybe Bob Jones is missing and the circumstances under which he went missing are particularly concerning. This is where there is some confusion because we are talking about corpus—the body of the crime. You cannot convict based only on a statement.

We can apply S.B. 438, to circumstances where there may not be that same evidence that Bob Jones was last seen with Senator Cannizzaro and when they were seen leaving the Legislative Building, they left in her car; thereafter, he was not heard from again, and he would ordinarily not just disappear. My statement would be admissible as long as other indicia of reliability can be proven, even though it does not speak to the corpus of the crime.

SENATOR PICKARD:
If I am reading correctly, section 2 talks about what you just described. We only need to prove a statement was made in a circumstance that suggests it was truthful, there was the opportunity to commit the crime and there is a vulnerable person who cannot testify, thereby providing that second data point. Is that correct?

SENATOR CANNIZZARO:
Yes. Section 2 is what the court would evaluate when making an evidentiary determination. It would look at things like whether there was opportunity to have committed the crime and the methods of interrogation used. I would stress that S.B. 438 is limited in that a statement must be made to a peace officer. The court would then make a determination as to whether these other factors

exist such that it would find the statement trustworthy and therefore admissible.

SENATOR PICKARD:
How do we avoid the problem of false confessions?

SENATOR CANNIZZARO:
That is a factor of a couple of things. We are not saying because this person confessed, he or she is therefore convicted. There is still a jury process. A jury still weighs that particular statement. They will hear from the officer to whom the statement was made about how it was made. They will hear other evidence that will demonstrate the opportunity to commit the crime. The judge will make a determination prior to the jury hearing this evidence about whether that statement in and of itself is trustworthy. The same way in which our system is designed to guard against all convictions is that proof has to be demonstrated beyond a reasonable doubt. This bill does not change that standard. It just says that in certain circumstances, we recognize the issue of corpus should be modified because there are other indicia of reliability within the statement itself.

VICE CHAIR HARRIS:
Does this bill address when a confession is sufficient for conviction, when a confession is admissible or both?

SENATOR CANNIZZARO:
It is twofold. In most cases, a confession or statement made by the accused is admissible as long as it fits within evidentiary standards. In a case where there is a corpus issue, the main evidence comes from a statement made by the accused.

In most cases, there is no corpus issue, and S.B. 438 would not apply to the general admissibility of statements as a whole. However, where there is a corpus issue such that you are relying on a statement, S.B. 438 provides for both its admissibility and for the conviction based on a confession.

It is complicated and I may not be explaining it in the best way, but this bill would not ordinarily apply, for example, if you have elements of a sexual assault such as a victim who can say, "This happened to me, here are the elements of the crime, and it was unwanted," video or DNA evidence. Even if the defendant

gave a confession, it would be admissible because this bill would never come into play.

The issue with admitting a statement in a corpus case is that the statement cannot come in until and unless there is proof—usually of a circumstantial nature—of a criminal agency involved. Once that proof is there, the statement can come in for the conviction even with no direct evidence of a crime being committed. Take, for example, cases where there is an eyewitness, DNA evidence or video surveillance. Senate Bill 438 would not only allow a defendant's statement to be admissible even though we have a corpus issue, it would also say the statement in and of itself is sufficient to convict someone as long as there is inherent reliability in the statement.

VICE CHAIR HARRIS:
In practice, once a judge makes a finding of trustworthiness and admits a confession, is that the end of the case? If I was in court and I said, "The law says this is sufficient in and of itself for the conviction." That is all you need in my mind; the judge let it in, so I am going home. Is that not how this bill would work in practice? If not, why?

SENATOR CANNIZZARO:
By way of example, an eyewitness statement in and of itself is sufficient for conviction under Nevada law. If we put an eyewitness on the stand and he or she testifies to the fact that a crime occurred, that would be sufficient in and of itself. A victim testifying about what happened to him or her is in and of itself sufficient for the conviction of a defendant.

Ultimately, the decision to convict is not made by the judge. Just because he or she says a victim can testify does not mean the jury is going to find beyond a reasonable doubt the defendant is guilty. Similarly, while S.B. 438 states a judge can bring in a statement and say it is sufficient for a conviction, it does not mean the jury is going to automatically convict.

Senate Bill 438 states if a case presented to a jury is solely dependent upon this particular statement and other indicia show the statement is reliable and trustworthy, the jury can convict if they find beyond a reasonable doubt this crime occurred and the defendant is the person who committed it. We are not dealing with a summary judgment issue where in civil law you would say, "Here

is a finding by a judge and, therefore, by operation of law, the case is decided a particular way."

This is an admissibility standard issue. If a judge says the statement comes in, it is still up to the jury to listen to the statement, hear from the officers who took the statement, hear any other evidence that might suggest the statement is trustworthy and make a determination whether they think beyond a reasonable doubt this crime had been committed by the defendant.

VICE CHAIR HARRIS:
To me, the term "sufficient" means "I do not need anything else. I do not need a reasonable doubt standard." The statement in and of itself is sufficient to warrant the conviction. The term "sufficiency" to me means, "That is it—I do not need to do any further findings. There are no other circumstances I need to access." I am hoping that what I am hearing, in practice, is not how the term is used.

SENATOR CANNIZZARO:
This happens in the context of constitutional rights. Should S.B. 438 pass, defendants will still be entitled to a trial by a jury of their peers, and the prosecution will still be held to the same burden. I will use the example Mr. Stubbs gave wherein Mr. Reyes interviewed for a job with a police agency, he gives this statement on a number of occasions to officers and there are other indications that a child did exist and this person had contact with this child who was too young to have reported or remembered the abuse. These are all things that lend to reliability such that the jury can evaluate all of those things to determine whether there is reasonable doubt. Even though the statement itself is sufficient, it still allows for the jury to make a determination. The prosecution is still held to the same burden because it is a criminal trial. None of those constitutional issues are abrogated by the fact that we say a statement is admissible and could be the basis for a conviction.

MR. STUBBS:
I have one more example. Law enforcement officers have explained to me that there is an issue with sex trafficking in Nevada. They will talk to johns—a lot of whom believe they are not doing anything illegal—who make confessions. However, because these johns are making general confessions and there is no way to find the sex traffic victims in those situations, they cannot be prosecuted or have charges brought against them. There are circumstances like

the tragic example I gave about the infant. But, for the most part, I foresee S.B. 438 being applied toward sex trafficking.

SENATOR SCHEIBLE:
Is there a jury instruction that pertains to this? Is one used, perhaps, in other jurisdictions? If we would need to craft one to address this issue, what would it look like?

SENATOR CANNIZZARO:
I am not familiar with jury instructions used in other jurisdictions, but just as with any other criminal trial in the State, they can be proposed by a party per NRS. From a practical standpoint, this would be something you would want to instruct the jury on, but it would be up to the individual lawyers and judges in those cases to accept those instructions. We do not have pattern jury instructions in NRS.

MR. STUBBS:
Several things may take place in practice in other jurisdictions. In the first instance, evidence is presented at trial and the judge would enter some kind of directed verdict if enough evidence was provided. In that case, it would never get to the jury.

In a second instance, if the evidence is trustworthy, the case would go to the jury. The jury would have the same standard for the crime as in any other case. The question to the jury is always the same, "This is the law. Applying the evidence that you have beyond a reasonable doubt, did this person break the law?" That would remain the same, but the corpus delicti issue is decided by the judge on whether the evidence is both admissible and the trustworthiness standard has been met.

Additionally, a defense attorney can raise a motion. There are motions in limine where a judge can make a decision pretrial.

SENATOR SCHEIBLE:
I do not know of any directed verdicts that we utilize in Nevada. Does this bill introduce that into our criminal justice system?

SENATOR CANNIZZARO:
No. Mr. Stubbs just gave an example of how it is handled in other jurisdictions.

SENATOR SCHEIBLE:
Is the idea to instruct a jury, "Utilize the confession like any other piece of evidence as you evaluate the case," or "If you find this confession to be credible despite whatever evidence you hear to the contrary, you must convict this person based on his or her confession?"

SENATOR CANNIZZARO:
No. In practice, there is evidence the jury can solely rely on. The jury can solely find a victim is credible in his or her testimony insofar as he or she is giving testimony to establish all of the elements of a crime. I will give an example of a robbery case wherein a victim was held at gunpoint. While being held at gunpoint, the victim testified the defendant said, "Give me all of your money or I am going to shoot you"; he or she handed over the money and the defendant ran away. That testimony in and of itself would be sufficient beyond a reasonable doubt—if the jury believed that victim—in order to convict. But we do not give jury instructions saying, "If you think the victim is credible, then despite every other piece of evidence, you must convict."

This bill operates the same way. A jury could say, "We believe this statement is credible. We do not think the defendant was under any duress when he or she gave the statement. It was made to a peace officer, and it makes sense that what is being presented was actually a crime the defendant committed. Therefore, we find him or her guilty." Nothing in Nevada law or in S.B. 438 instructs a jury to disregard every other piece of evidence. They can, but that is the current law. That does not change with S.B. 438. The bill just states if a jury believes the statement, it is sufficient. It does not mean, however, the jury would be instructed to disregard every other piece of evidence. We do not instruct juries that way, and juries do not operate that way. It is up to the jury to make those decisions and for counsel to make arguments for what they think the strongest pieces of evidence are. A lot of this would be left to the trial court judge and the respective parties to ferret out whatever it is they ultimately come up with in terms of a jury instruction.

SENATOR SCHEIBLE:
It seems this rule comes into play long before a jury trial. We are talking about a corpus issue and being able to bring a case. Is the intent with S.B. 438 to secure convictions for people who would otherwise be found not guilty, or is it to be able to bring charges against people for whom charges would not otherwise be able to be brought? In other words, is the fork in the road at the

beginning where we are deciding whether to charge somebody, or is it at trial where we are not sure whether we can convict him or her?

SENATOR CANNIZZARO:
In many respects, S.B. 438 deals with whether someone can be charged with a crime. Corpus issues have to deal with whether a statement in and of itself is admissible. This would not apply in every case but before one gets to that point, one has to have a situation where there is an issue with demonstrating all of the elements of a crime through direct and circumstantial evidence.

To use an example, the most common way in which corpus is thought of is that there is no body, but a murder is believed to have taken place. As a prosecutor, I worked on a case wherein we had a dead baby but no body; the body of the baby was never found. That is a classic corpus example. How do you charge someone with killing a baby if you do not have the body? That crime can be charged if you have statements from the defendant. In this case, the mother confessed to police officers she hit then drowned her baby, wrapped him in a blanket then some plastic and threw him in the dumpster. That statement never comes in unless we can establish—and there was an argument on our pretrial writ of habeas corpus regarding corpus delicti in this case—additional evidence.

We had to establish that there was a baby who was born, he was solely in the mother's care, that many people had seen that baby in good health, that he had been to a doctor and there were no health issues with that child, that the mother had been with the baby and was the last person alone with that child. We had to additionally establish that shortly after the day she indicated she killed her child, she packed up, left town and gave multiple, differing statements to other individuals as to the whereabouts of this baby. She stated he was with the father, though he never was, that he had gone with her out of town, though he did not. She also stated she had given him to another person to take care of, though there was no evidence that person ever had that child.

In a case like this, it is difficult to get to the point of even bringing charges because you do not, literally, have a body. But in that particular case, we could bring charges because there was all of this other circumstantial evidence that demonstrated this baby did not just disappear. He was not kidnapped, and he did not just get up and walk away—he was a baby. All of those circumstances come together to demonstrate something more nefarious occurred, and there is an idea of criminal agency. Once this is established, the statement comes in to

explain that evidence, and the jury is given the bulk of the evidence in order to make a determination.

While this bill might certainly apply in the context of explaining to the jury what they can rely on, S.B. 438 comes into play more so when determining whether to bring charges because the corpus issue deals with whether a crime has even been committed.

SENATOR SCHEIBLE:
The idea with this bill is that in the example you just gave, you might have been able to bring charges even if the baby had not been to a doctor or you did not have statements from her saying the baby was with the father or the neighbor. You could just use the fact that she told a police officer she killed her baby, and that would be enough to bring the charges, is that correct?

SENATOR CANNIZZARO:
This is a good example of how S.B. 438 is narrowly tailored. This bill would not apply in that situation because that crime is murder. Senate Bill 438 does not apply to murder cases.

SENATOR SCHEIBLE:
Do we have a definition of confession? I anticipate people are going to say, "I said I was there, not that I did it," or "I said it happened, not that it was my fault."

SENATOR CANNIZZARO:
This is a good point and one of the reasons S.B. 438 needs to be specific to instances where there is a corpus issue because, oftentimes, the difference between a defendant's statement and what we would deem to be a confession is an argument made to a jury. Sometimes, we want to admit a defendant's statement at trial because it demonstrates the accused is not being forthcoming and truthful in his or her explanation of where he or she was at the time, what he or she was doing or how the crime occurred. This bill would not apply in those cases, but it demonstrates the point you are trying to make: is it really a confession? That is a question of fact for a jury to decide, whether it is someone who is saying he or she committed this crime versus simply putting himself or herself at the scene or offering a particular fact.

MARK SCHIFALACQUA (Senior Assistant City Attorney, City of Henderson):
My office handles all misdemeanor crime that occurs in the City of Henderson, and I am the head of the Criminal Division.

I support S.B. 438. It seeks to replace the outdated and unjust evidentiary rule—the corpus delicti rule—with a trustworthiness standard for some crimes.

I will give a brief example to explain why this bill is so important. I prosecute almost all DUI crimes that occur in the City of Henderson. A call comes in that a man has crashed a car into a light pole in the middle of the night. Police respond to that call. They find the man standing next to a car with no one else around and the police try to evaluate him to see if he is okay. The officer asks the man if he was driving, and the man answers, "Yes." The man admits to drinking through conversation with the officer. Statements such as these that are made by the defendant, that were completely voluntary, truthful, trustworthy and made sense given the circumstances of the case have been excluded under the corpus delicti rule simply because a DUI requires driving or being in the actual physical control of a vehicle while drunk.

Corpus delicti creates a level of unfairness in the system, and the original purpose of the rule is no longer being served. The rule came about 400 years ago at a time before our caselaw had developed. We now have rules that eliminate any type of duress or physical force from the police when dealing with confessions. There is the Miranda rule, where a person is allowed to have counsel or to stop speaking with police at any time. There are Jackson-Denno hearings, which are hearings to determine whether a confession is admissible if the defense believes in any way the defendant's will was overborne or he said something untruthful just to stop the questioning. Because of such rules, the corpus delicti rule no longer serves justice and hurts sexual abuse, DUI and domestic violence cases where no tangible injuries exist but trustworthy, honest statements are made to police. These cases are being excluded for no good reason.

This is somewhat of an outlier in Nevada law as Senator Cannizzaro said. Statements of victims can come in without corroboration and at least be considered by the trier of fact. This bill seeks to have defendant statements considered if they are trustworthy.

The federal government abolished the corpus delecti rule in the 1950s. There are United States Attorneys' Offices in every major city across the Country, and there have been no claims of increased and false confessions as a result. Almost all of the Western States have abandoned it, including Utah, Colorado, Arizona and Washington. England, that came up with this rule, has abolished it.

The trustworthy standard would take a holistic approach to the piece of evidence and consider, based upon everything, if is it trustworthy to be admissible. Then it can simply be considered by the trier of the fact—that is all S.B. 438 would offer.

To be clear, under this flexible standard, the prosecution would still be required to prove all elements of the offense beyond a reasonable doubt, but the elements could be established by independent evidence of a crime, a trustworthy confession or a combination of the two.

Gaxiola v. State, 121 Nev. 638, 119 P.3d 1225 (2005) illustrates the injustice that occurs in some cases, especially those against children. A child was abused and the defendant confessed to this. Because the victim was a child, he was not able to say everything that happened, just several of the incidents. The Nevada Supreme Court struck down one of the counts because the child was not able to articulate that one incident, although the defendant clearly confessed to all of the other incidents in a statement that was voluntary and trustworthy. Everything else was corroborated around the statement, but this rule still excluded it. That is why corpus delicti serves somewhat of an injustice. This rule greatly affects our misdemeanor DUI and domestic violence cases; it does not serve to exclude any false confessions.

SENATOR PICKARD:
Is it your belief this change will affect the corpus delicti doctrine throughout the criminal code in Nevada?

MR. SCHIFALACQUA:
In some cases, yes. Section 1, subsection 1 paragraph (a), subparagraph (2) lists DUI offenses, and subparagraph (3) lists domestic violence offenses as being included in this bill. Those are the types of cases where I see injustice on a misdemeanor level.

ADAM CATE (Nevada District Attorneys Association):
We support S.B. 438, and agree with much of what has been said. This is a reasonable and limited change to corpus delicti. The trend in law throughout the United States is to remove the corpus delicti rule in its entirety. The United States Supreme Court did it in 1954 for federal cases. Many states have abolished the rule either by statute or through decisions of a court. While it is an old rule and has a long history in our juris prudence, it is no longer necessary. We have the due process clause and the right against self-incrimination in *The Constitution of the United States of America*. Additionally, the Miranda rule was created after a long history of police overreaching in the context of confessions. These protections have been placed in law to make sure confessions are obtained through nonnefarious means. If obtained in such a manner, defendants can challenge the admissibility of their confessions in court to prohibit the jury from ever hearing them.

The corpus delicti rule prevents the State from prosecuting people who are admittedly guilty. This bill requires confessions to be made to police officers under trustworthy situations. These confessions, as well as other indications of trustworthiness determined by a judge, would be presented to a jury.

Some discussion was made whether "sufficient" means simply a conviction will happen. A jury instruction is commonly used in sex crimes and crimes against children to tell the jury the testimony of the victim alone is sufficient to convict the defendant. They use the word "sufficient" just as it is used in this bill. I have presented cases that rely on victims' testimonies to juries and many times, defendants have been found not guilty.

There are situations where a crime against a child, usually a sexual crime, is disclosed years after the events allegedly occurred. The ability for the State to find physical evidence or conduct DNA testing is impossible, so we put the victim on the stand. The jury can find the defendant guilty—but they have to believe the victim.

Senate Bill 438 simply puts the confessions of a defendant on the same footing as a victim's statement about what happened. If we can convict a person based solely upon what a victim has said with no additional physical evidence, why can we not do the same for a defendant?

It is important to make clear what happened in the *Gaxiola v. State* case. A victim of a sexual offense—a minor child—came forward and said, "This person did A, B, C and D to me." The suspect is interviewed and confesses not only to A, B, C and D, but also to X, Y and Z. Because she had been abused so many times, the victim—a seven-year-old girl—did not remember every single incident.

While the defendant was convicted of all incidents to which he confessed, the Nevada Supreme Court overturned the convictions on X, Y and Z, stating the only evidence of those charges was the defendant's confession. The corpus delicti rule was not met insofar as those charges. There was, however, significant evidence the defendant's confession was corroborated. He first confessed to A, B, C and D which the victim also testified about in detail. So there was additional evidence to say this was a reliable confession—just as S.B. 438 would require the confession to be trustworthy.

No court has ever found that the corpus delicti rule represents a constitutional right. It is nowhere in the United States Constitution. These other rules that have been designed to prevent false confessions exist in the United States Constitution and are not altered by this bill.

As previously stated, the proof-beyond-a-reasonable-doubt standard is not altered by S.B. 438. It simply changes when the State can prosecute a case and what evidence the State can rely upon in attempting to secure a conviction. Just as with a victim's testimony being sufficient, now a defendant's confession in certain limited circumstances would be sufficient, but it does not mean it is required. The jury is free to disregard the confession, to find it was not reliable or that other evidence tends to indicate the confession is false. The proof-beyond-a-reasonable-doubt standard, the highest standard in law, would certainly not be met under those circumstances.

States are moving away from the corpus delicti rule because admittedly guilty people are not being convicted of their crimes, not to falsely convict people based solely on their confessions.

RYAN BLACK (City of Las Vegas):
The City prosecutes all misdemeanor crimes in the City of Las Vegas. We are walking away from a lot of battery domestic violence cases and DUI cases because of the corpus delicti rule. This bill would change that.

Senate Bill 438 requires a trustworthiness standard to be met, and our judges would make that determination. We trust our judges and their decisions. For those reasons, we support S.B. 438.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):
The facts of the case spelled out by the proponents of S.B. 438 are tragic. Changing 200 years of law designed to protect the innocent, however, will not serve justice. When we strip rights away from innocent people to go after a guilty person, we strip rights away from everyone. Nevada is not an outlier in the corpus delicti rule. There is no "tide of states" changing this rule as the bill's proponents have stated. Twelve states have changed it; they use what is called a trustworthiness standard. As written, this bill does not satisfy that standard.

When using statutory interpretation principles, the courts look to the plain language first. As Vice Chair Harris adequately pointed out, section 1, subsection (1) states, "A confession made by a defendant is, in and of itself, sufficient to warrant the conviction of the defendant without other proof that the defendant committed a crime."

Senator Cannizzaro used the eyewitness instruction to bolster that by saying, "The testimony of the witness is enough in and of itself." There is a problem with that as well because eyewitnesses are mistaken. In 75 percent of cases where people have been exonerated, eyewitnesses were mistaken.

This bill actually removes clarity. When we look down the road toward a jury instruction, S.B. 438 is going to remove some clarity from a jury instruction as well. No jury instruction ever says, "You must convict for a certain reason." It will invade the province of a jury by saying, "The court says a confession and nothing else is okay, so it is okay to convict this person."

Senate Bill 438 overrides the due process requirement that only confessions a court has deemed voluntary can be admitted as evidence—this bill says nothing about whether a confession is voluntary. Our system in America is an accusatorial system, not an inquisitorial system as used in other parts the world. A state must establish guilt by evidence that has been independently and freely secured. It may not, by coercion, prove charges against an accused out of his or her own mouth.

Likewise, this bill seems to permit a confession elicited in the absence of Miranda-rule warnings be admitted as evidence, which would also violate constitutional precedent dating back to 1966.

Moreover, S.B. 438 increases the risk of convicting the innocent. According to the National Registry of Exonerations, four exonerations in Nevada involved false confessions: three wrongful convictions for murder and one wrongful conviction for child sexual abuse. Twenty-eight percent of the Nation's 364 wrongful convictions overturned by DNA evidence involved false confessions. There have been innocence cases in which the wrongfully convicted person confessed to a crime, and there appeared to be evidence demonstrating truthfulness of the confession.

One of the most common methods of interrogation taught around the Country by law enforcement is called the Reid Technique. Nevada officers use this technique; it is perfectly legal but psychologically coercive. Richard Leo, a false confession expert, determined the technique is psychologically coercive and contains three major errors. First, the misclassification error occurs when an officer decides an innocent person is guilty. Second, coercion error occurs when one is subjected to psychologically coercive factors such as stress, fatigue, lengthy questioning or mental or physical fatigue. The suspect feels his or her only choice is to comply and admit guilt. Finally, contamination error occurs when after admitting guilt, police help create a narrative of the crime that includes facts an innocent person would not know.

Part of the difficulty Nevada faces is that interrogations are not recorded, so we do not know what happens in that room other than what the police officer says. Innocent people who are not vulnerable as defined in NRS 200.5092 have falsely confessed due to numerous reasons such as real or perceived intimidation of the suspect by law enforcement, compromised reasoning ability of the suspect due to exhaustion, stress, hunger, substance use, limited education, legal but deceptive interrogation tactics and fear on the part of the suspect that failure to confess will yield a harsher punishment.

The corpus delicti rule dates back to 1660. A couple of people were accused of murder, and some of them were hung because that is how fast things were done back then. The victims later came out of the woodwork.

Traditionally, the corpus delicti rule requires a state to present evidence demonstrating elements of a crime independent of a defendant's confession. Extrajudicial confessions—confessions made outside of the presence of a judge and jury in court—are more suspect than admissions made at trial because they face neither the compulsion of the oath nor the test of cross-examination. That is from *Opper v. United States*, 348 U.S. 84, 90 (1954).

As I mentioned earlier, part of S.B. 438 is flawed in that it does not traditionally use the trustworthiness standard. The trustworthiness standard succinctly states in order for you to use a confession, there must be substantial, independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable and corroborative while independently establishing the other elements necessary to prove the offense. Senate Bill 438 has none of this—the confession alone is enough—so it does not satisfy the trustworthiness standard.

What happened to this child is problematic. However, changing the law by not tracking the trustworthiness standard adopted by other states is just as problematic because it serves to place innocent people at risk. Innocent people have confessed to crimes they did not commit. Trying to bolster the argument that this bill is okay by saying, "Nevada gives a jury instruction that testimony from a witness alone is good enough," is wrong. In DeMarlo Barry's case, an eyewitness wrongfully thought he or she recognized him, and Mr. Barry spent years in prison for a crime he did not commit.

Changing law to fix this one case is not sound legal policy given all the other problems this bill presents. I urge you to reject S.B. 438. It is not narrowly tailored, it removes clarity, and it does not satisfy the trustworthiness standard. Twelve states out of 50 is not a tide, a trend or a wave, and Nevada is not an outlier.

VICE CHAIR HARRIS:
Would you support S.B. 438 if it tracked the trustworthiness standard?

MR. PIRO:
If this Body were to change the law, it should look at other jurisdictions and track closer to that standard. This bill does not.

SENATOR HANSEN:
In this particular case, is there anything we can do to modify the law that would be acceptable to public defenders? In my mind, this case is open and shut given the evidence of lie detectors, numerous verbal confessions, a written confession and horrible circumstances. There should be some way to modify this law so this particular type of confession would be acceptable to public defenders and prosecutors.

MR. PIRO:
Although this case troubles me, lie detectors are not used in court because they have been found to be unreliable. The way this bill is written, it would give this family justice, but it would do injustice everywhere else because it does not follow the trustworthiness standard.

SENATOR HANSEN:
I understand the lie detector issue, but there are multiple things in this particular case. It involves an underage victim who is too young to testify and an accused who has, by any reasonable standard, admitted guilt and is not a vulnerable person. There has got to be some way to tweak the law a little so this particular type of confession could be heard.

MR. PIRO:
This case may not even satisfy the trustworthiness standard. Before you can even get to the confession, there has to be substantial, independent corroborative evidence.

SENATOR HANSEN:
I would like to work together on some amendments, because this seems to be an example of where we do need to look at this type of confession.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
I adopt the testimony and the constitutional analysis given by Mr. Piro. Without more trustworthiness written into the law, we oppose S.B. 438.

I want to reiterate that 28 percent of the Nation's 364 wrongful convictions overturned by DNA evidence involved a false confession. As Mr. Piro stated, there have been innocence cases in which the wrongfully convicted person confessed to a crime and there appeared to be evidence demonstrating truthfulness of the confession.

Eddie Lowery was wrongfully convicted of raping an elderly woman in Ogden, Kansas, in 1981. After spending ten years in prison, DNA testing proved his innocence and identified the actual perpetrator. Mr. Lowery was a 22-year-old soldier stationed at Fort Riley who became a suspect after being involved in a traffic accident near the victim's home. He was brought into the police station for questioning and falsely confessed. "I didn't know any way out of that except to tell them what they wanted to hear, then get a lawyer to prove my innocence," he recalled. At trial, the jury heard details that prosecutors insisted only the rapist could have known, including the fact that the rapist hit the 75-year-old woman in the head with the handle of a silver table knife found in the home. A forensic analyst from the state crime lab testified Mr. Lowery's blood type was consistent with evidence at the crime scene.

This is just one of the many examples of innocence issues we have seen throughout this Country. Abundant caution must be exercised when proceeding in this manner. Recognizing the importance of having a Miranda warning before a person confesses and protecting due process rights is critical.

KENDRA G. BERTSCHY (Deputy Public Defender, Office of the Public Defender, Washoe County):
Over 36 years ago in Louisiana, Cathy Woods confessed to a murder she did not commit. She told individuals at a mental health institution she killed a girl named Michelle in Reno in order to get better private living accommodations. After her confession, she was transported to Reno where she had a trial and was convicted. The case was overturned by the Nevada Supreme Court. There was a second trial, and she was convicted again. She spent 35 years in the Department of Corrections for a crime she did not commit—that started based on a false confession. At every stage of Cathy Wood's proceedings, she had competent legal counsel. I am not trying to infer the Washoe County District Attorney's Office did anything inappropriate.

After 35 years, with the help of the Innocence Project and the District Attorney's Office, DNA testing was performed on a cigarette butt that was found. It contained DNA evidence belonging to another individual who had been tied to the deaths of at least three individuals in California. We are concerned S.B. 438 will lead to the false imprisonment of innocent people like Cathy.

Regarding the information provided earlier on the 28 percent of false confessions that had been exonerated, 49 percent of those false confessors were 21 years old or younger, and 33 percent of the false confessors were 18 years old or younger at the time of their arrest. Ten percent of those false confessors had mental health or mental capacity issues. Regarding the demographics of the 364 exonerees, 69 percent were people of color. We are concerned this will further impact the disenfranchised members of our community and end up subverting the truth-seeking process.

In July 2018, I attended the National Criminal Defense College in Macon, Georgia. One of speakers was one of the "Central Park Five," five teenage boys who were wrongly accused and convicted of raping an individual in Central Park. Some of the boys confessed to the rape. I spoke with one of the individuals who did not confess, but he went at great lengths to explain why people confess to crimes they do not do. It is extremely important to remember people confess to crimes for a variety of reasons, not just because they are guilty. Sometimes, they do not understand what is going on, there may be police interrogation issues, they just want to get out of there and, sometimes, we do not know why they confess. That is the problem with this bill—you are potentially convicting the innocent.

As the Deputy District Attorney who spoke on behalf of the Nevada District Attorneys Association testified, this bill will be a jury instruction that will state, "A confession made by a defendant is, in and of itself, sufficient to warrant the conviction of the defendant without other proof that the defendant committed a crime." That is what the jury will have, and they will be instructed by a judge that a confession alone is sufficient.

Based on the information provided and the testimony in this hearing, this may end up being not a directed verdict but an advisory opinion issued by a judge if he or she finds there is sufficient evidence. This means a judge would be able to provide additional information to the jury about his or her opinion on the case. A judge would not tell the jury how to reach a verdict, but he or she can say, "I found that there is sufficient evidence."

I hope this is not what this bill is trying to do, but that is part of my concern with just how far-reaching this would become. I understand and sympathize with the family; not being able to prosecute the individual who confessed to a

horrific act is troubling. However, this bill will not give those individuals justice in the way they are hoping, and it will end up convicting innocent people.

In another example, there was a daycare epidemic throughout Texas, Florida and California in the 1980s where there were concerns and allegations that daycare providers were having sexual relations and performing satanic acts on the children under their care. Individuals and counselors spoke with the children who ended up saying, "Yes, we saw that this three-year-old was abused." This led to the prosecution and conviction of several individuals who were later found to be not guilty of all charges.

When officers are informed a crime has occurred, there is a concern they engage in tunnel vision. This could lead to focusing on an innocent individual or something that did not actually happen instead of looking for the guilty person.

SENATOR OHRENSCHALL:
Over the last two decades, our gang-affiliated population has grown exponentially in southern Nevada. In your practice, have you seen someone confess to something he or she did not do out of fear of retaliation either against himself or herself or a family member?

MS. BERTSCHY:
Not personally, though I have had concerns with clients not testifying or coming forward due to this type of pressure. Other criminal defense practitioners have said some of their clients have confessed to crimes they did not commit based on pressures, but I cannot corroborate that.

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):
I have been practicing law for 20 years, and I want to go to the heart of a key issue being overlooked. Senate Bill 438, as proposed, states in section 1, subsection 1, "A confession made by a defendant is, in and of itself, sufficient to warrant the conviction of the defendant without other proof that the defendant committed a crime."

In Nevada, we have a jury instruction given in sexual assault cases which states, "The uncorroborated testimony of a sexual assault victim is sufficient to sustain a conviction." There is a difference between "sufficient to sustain a conviction" and "sufficient to warrant a conviction." Having a judge make a determination, review the reliability and credibility of a defendant's confession,

and say by jury instruction that a confession is sufficient to warrant a conviction is unconstitutional and usurps the function of a jury.

There has been a lot of talk this morning about admissibility versus where at the fork in the road does this bill help us; it does not make any difference to a charge that can be brought. Prosecutors have broad discretion to bring charges against defendants. While the facts of this case are horrific and I am sympathetic to them, Clark County District Attorney Steven Wolfson could have brought this case—he clearly has the tools and ability. He did not, and he is now looking for an unnecessary legislative fix. We have jury instructions in sexual assault cases that allow a single item of evidence, either a victim's statement or a defendant's confession, to be a basis for a conviction. Senate Bill 438 essentially tells a judge to instruct the jury that a defendant's confession alone is sufficient to warrant the conviction.

I have listened to the examples provided this morning. We heard examples about DUI, but we heard about a car crashing into a pole. That is not a case where there is no corpus; it is a case where there is evidence someone drove a car into a pole. Regarding the case where one count was thrown out and multiple counts of sexual abuse were upheld by the Nevada Supreme Court, that defendant is serving multiple life sentences as a result.

This bill does not solve a problem, and we are concerned it would leave the court instructing the jury a confession is sufficient to warrant a conviction. If you are a juror and you hear someone say, "This is sufficient to warrant a conviction," what are you going to do? This is why I say it usurps the function of the jury.

There is nothing stopping Mr. Wolfson from bringing the case of the infant mentioned by Mr. Stubbs due to the statute of limitations on sexual assault cases. Additionally, he already has the jury instruction that states it is sufficient to sustain a conviction—versus sufficient to warrant—because it is a sexual assault case.

I agree with all of the testimony this morning regarding false confessions as well as the trustworthiness standard, which requires independent evidence. I do not agree, however, that this bill would not necessarily apply to murder cases. If the murder involves domestic violence or the murder of an older or vulnerable person, S.B. 438 would apply to murder cases. This is where we get into the

concern over false confessions, as those are the cases wherein we see people being exonerated after spending decades in prison.

We are opposed to S.B. 438. It usurps the function of the jury and leaves a judge instructing a jury a statement is sufficient to warrant a conviction. We are not talking about the admissibility of statements, we are talking about how a jury is ultimately instructed by a judge. I join all of my colleagues who spoke before me in this regard.

MR. STUBBS:
The justice the family has asked for had this case been brought is twofold. They want Willard Reyes, Jr. to be registered as a sex offender and for him to get help. These are completely reasonable requests that can only be obtained with a conviction.

The family went to Mr. Reyes, Jr., and was basically told to pound sand, and he had an attorney. Corpus delicti protects him, and he is getting away with this. Further devastating to the family was finding out he is engaged to a third-grade teacher who works for the Clark County School District in Mesquite, Nevada. The family contacted the school district that informed the family nothing could be done because there is no conviction. This bill is not just about this case. What about the next case with this particular person who now has this armor of corpus delicti moving forward?

The jury instructions quoted by opponents of this bill deal with a victim's testimony. As with this particular case, we are talking about cases dealing with vulnerable people and child sex abuse where the victim cannot testify because he or she is either physically unable, does not have the mental capacity or is too young to remember. That is an apples-and-oranges comparison.

If we simply look at the language of the bill, S.B. 438 gives many more protections than what the 12 states provide. The Legislature can actually pass the same trustworthiness standard the 12 states passed, and it will not have as many civil rights protections as contained in this bill. Nevada is going above and beyond what those states have done.

The most glaring difference is the fourth factor contained in S.B. 438. Normally, the trustworthiness standard has only three factors, but Nevada adds a fourth—whether the defendant is a vulnerable person. Someone in a mental

institution is a vulnerable person, and that would be factored in. By adding this extra protection, Nevada would be the forerunner of civil rights in the trustworthiness standard.

Additionally, the trustworthiness standard applies to all laws in the other states. It could apply to traffic tickets if they were criminal in nature. Here, it does not. Senate Bill 438 applies to four specific sections: sexual assault, DUI, domestic violence and when there is a victim who is a vulnerable person. This is in addition to the rights of the defendant if he or she is a vulnerable person—something that was added so we could have more protections.

I am a civil rights and criminal attorney, and I also represent the family of this victim. It was my request that this bill be drafted in a way that protects civil rights. This bill goes above and beyond anything any other state has attempted to do.

The bill drafters for Nevada drafted the trustworthiness standard if we just want to track that. I will compare S.B. 438 to the trustworthiness standard in the other 12 states.

The first standard from the 12 states is "A judge is to consider evidence that supports the facts contained in the statement of the confession." Are there facts in the confession that we can say, "That happened. That person was there on that date?" Section 1, subsection 2, paragraph (a) states, "Whether there is evidence demonstrating the truthfulness of portions of the confession." It is the same thing.

The second standard from the 12 states is "evidence that may support the commission of a crime which is corroborated by the facts contained in the statement or confession." Are there corroborations in the facts in confessions versus facts of the crime? Section 1, subsection 2, paragraph (b) goes further to say, "Whether the defendant had the opportunity to commit the crime." We are a stricter standard than the trustworthiness standard.

The third standard from the 12 states is "whether the circumstances under which the statement or confession was made support the assertion that the statement or confession is trustworthy." Section 1, subsection 2, paragraph (c) has "the method of any interrogation used to solicit the confession." I see those as the same thing.

It is important for Nevada to be at the forefront of protecting people's civil rights, and it is important this does not apply to everybody. We must fix the gaping hole that is in our judicial system while allowing statute to work with everything else.

The family has no objection to changing "warrant" to "sustain." As a civil rights and criminal defense attorney, I personally think that would be a good thing.

I do not understand if the Public Defender's Office wants to move backward and give people less rights by using just the trustworthiness standard.

SENATOR CANNIZZARO:
There were examples given where people confessed to others who were not peace officers. Confessions in a mental hospital and to others who are not peace officers would not be covered by S.B. 438. Additionally, nothing in this bill takes away constitutional protections. Inadmissible statements would still be subject to the same standards such as the Miranda rule or whether a confession is coerced. The means of the interrogation or how the confession is obtained is addressed by the language of this bill.

Nothing we would write in statute would all of a sudden require a subsect of confessions or statements to officers that would not be subject to the Miranda rule or other constitutional protections. That seemed to be one reluctance to this bill. This bill deals with the issue of corpus, not with whether a statement in and of itself would also be subject to some of those other constitutional protections.

It is important to note that S.B. 438 still has a clear place for a jury. I believe in juries. People who sit on juries are trying to do the best job they can, and they take things to heart. I have spoken to a number of jurors who have sat on juries. They take that responsibility seriously in weighing the evidence; they do not take whatever attorneys say at face value. Jurors take their time and deliberate. Talk to any trial or criminal defense attorney or prosecutor and they will tell you jurors do not take whatever he or she says, especially in the criminal context. Jurors look at the evidence. There have been cases where I thought for sure I was going to get a verdict one way, and it came out the exact opposite. It is because the jury is scrupulous in their evaluation of the evidence. That is an important piece of this bill.

Senate Bill 438 is not a law for just one case. We have heard a number of examples where this bill would apply, because there is injustice in the idea of where and when corpus exists. This bill addresses that issue. Certainly, there is room to work on the language, and I am happy to do that in the upcoming days.

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VICE CHAIR HARRIS:
I will close the hearing on S.B. 438. The meeting is adjourned at 9:58 a.m.

RESPECTFULLY SUBMITTED:

Jenny Harbor,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	6		Attendance Roster