

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session  
April 19, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:17 a.m. on Friday, April 19, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

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

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Shea Backus, Assembly District No. 37  
Assemblywoman Susan Martinez, Assembly District No. 12

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Committee Policy Analyst  
Nicolas Anthony, Committee Counsel  
Eileen Church, Committee Secretary

**OTHERS PRESENT:**

Serena Evans, Nevada Coalition to End Domestic and Sexual Violence  
Cristina Hernandez, Jean Nidetch Women's Center, University of Nevada,  
Las Vegas  
Ashley Yuill, Jean Nidetch Women's Center, University of Nevada, Las Vegas

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Sarah M. Adler, Nevada Coalition to End Domestic and Sexual Violence;  
Pyramid Lake Paiute Tribe  
Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender,  
Washoe County; Office of the Public Defender, Clark County  
Summer Merrill  
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association  
A.J. Delap, Las Vegas Metropolitan Police Department  
Holly Welborn, American Civil Liberties Union of Nevada  
Mike Ramirez, Las Vegas Police Protective Association  
Corey Solferino, Washoe County Sheriff's Office  
Rick McCann, Nevada Association of Public Safety Officers  
Scott Edwards, Las Vegas Peace Officers Association  
Sharath Chandra, Administrator, Real Estate Division, Department of Business  
and Industry

CHAIR CANNIZZARO:

I will open the hearing of the Senate Committee on Judiciary with Assembly Bill (A.B.) 134.

**ASSEMBLY BILL 134 (1st Reprint)**: Revises provisions governing privileges.  
(BDR 4-694)

ASSEMBLYWOMAN SHEA BACKUS (Assembly District No. 37):

Assembly Bill 134 is intended to revise existing law which is codified in *Nevada Revised Statutes* (NRS) 49.2541 to 49.2549, providing for a privilege for confidential communication between a victim of domestic violence, sexual assault and human trafficking and a victim's advocate. The law addresses nonprofit programs. With this bill we hope to extend this privilege to programs at universities, State colleges or community colleges within the Nevada System of Higher Education or a program of a tribal organization. I have submitted my testimony ([Exhibit C](#)).

SERENA EVANS (Nevada Coalition to End Domestic and Sexual Violence):

We support A.B. 134. I have submitted my testimony ([Exhibit D](#)).

CRISTINA HERNANDEZ (Jean Nidetch Women's Center, University of Nevada, Las Vegas):

I support A.B. 134. I have submitted my testimony ([Exhibit E](#)).

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ASHLEY YUILL (Jean Nidetch Women's Center, University of Nevada, Las Vegas):  
I support A.B. 134. I have submitted my testimony ([Exhibit F](#)).

MS. HERNANDEZ:

I would like to read a letter in support of A.B. 134 from Holly Ramella, CARE Coordinator at the Jean Nidetch Women's Center, University of Nevada, Las Vegas ([Exhibit G](#)).

SARAH M. ADLER (Nevada Coalition to End Domestic and Sexual Violence; Pyramid Lake Paiute Tribe):

I would like to read two letters in support of A.B. 134 from Clarice Charlie-Hubbard, Program Director, Family Violence Prevention Program for the Inter-Tribal Council of Nevada ([Exhibit H](#)) and Kim Lowery, Victim Services Program Sexual Assault Advocate for the Pyramid Lake Paiute Tribe ([Exhibit I](#)).

SENATOR HARRIS:

Are there other centers this would expand to?

MS. EVANS:

The University of Nevada, Las Vegas (UNLV), is the only college campus in Nevada that has a women's center. In Reno, Crisis Support Services of Nevada (CSSN) houses a sexual assault support service program with an advocate who works on the University of Nevada, Reno, campus. Since CSSN is through a nonprofit, it is covered under the privilege statute. We hope other college campuses will have advocates.

MS. ADLER:

For the tribes in Nevada, there are 25 tribal locations and 17 tribal councils. Most of them have social workers who provide some degree of advocacy services.

MS. HERNANDEZ:

We have been in talks with Nevada State College and the College of Southern Nevada (CSN). For CSN, we provide our 24-hour hotline and are working with Nevada State College to create a similar program. This will ensure that future advocates in our college campuses will have the same rights.

ASSEMBLYWOMAN BACKUS:

We received two letters in support, from Nevada State College ([Exhibit J](#)) and the Consolidated Students of the University of Nevada, Las Vegas ([Exhibit K](#)).

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

We oppose A.B. 134 and have submitted a proposed amendment ([Exhibit L](#)).

Providing a safe place for victims to disclose what has happened to them is extremely important. Once criminal charges are filed, there needs to be some balance to ensure that discovery is allowable so we are able to provide an adequate and fair defense for our clients.

We have proposed this specific amendment to ensure there is an exception to the privilege concerning communications relevant in any civil or criminal proceeding where the communications may be relevant to an element of a claim or defense. All the communications would not be disclosed.

Our amendment is based on other Nevada privileged statutes. This is not the first one that would allow communication to be disclosed once criminal charges are filed. It is similar to the attorney-client privilege, when the client confidentiality is waived if the lawyer and client have a dispute with each other and it goes to court. Once you go to court, you become adversaries and that privilege is waived. The same thing happens in a doctor-patient relationship. Those are all the privileges in statute which already provide when charges are attached that you can have information disclosed.

As U.S. Supreme Court Justice William J. Brennan said in *Taylor v. Illinois*, 484 U.S. 400 (1988), criminal discovery is not a game. It is integral to the quest for truth and fair adjudication of guilt or innocence. Violations of discovery rules cannot go uncorrected or undeterred without undermining the truth-seeking process. Although that is about discovery violations, it helps to show how important it is in order to get to that truth-seeking function to allow for the defense to have discovery.

I am not talking about having access to the entire file. We just want to have access if different evidence is provided.

CHAIR CANNIZZARO:

How do you get to the point of knowing what portions of those communications should be disclosed when we are talking about a claim or defense? That would require the defense to let either the prosecution or the court know this is our defense and what implications come as a result.

MS. BERTSCHY:

This language is tailored from other statutes. There is some concern about how this would be done, and we should not have to provide our defense to the prosecution. This is something that could be done through motion practice where we would learn there are some issues, or the prosecutor would say we have exculpatory evidence.

CHAIR CANNIZZARO:

The privilege would extend to any communications, so how would anyone know if there is anything in these communications in the first instance? How do we get to the point of motion practice in terms of what should be disclosed?

MS. BERTSCHY:

This is similar to other instances where the prosecution does not necessarily know that this has occurred. The prosecution finds out, and it is something that would be provided to the defense. That is where we would request it from the judge to do an in camera review in order to ensure we are provided the information if it is an element to a defense.

CHAIR CANNIZZARO:

How does this not chill the idea behind having a victim advocate as someone who a victim can ask for assistance? It says to the victim, "Well, everything you said is confidential unless a civil lawsuit or a criminal case comes forward, in which case all of these communications would be disclosed."

MS. BERTSCHY:

We are trying to find a balance to ensure we do not have a chilling effect when victims come forward. At the same time, we need to ensure that we have a fair trial. If we can narrowly tailor it when criminal charges are filed and only when it is relevant to the defense, then that does strike that balance.

CHAIR CANNIZZARO:

We are now back to the original question of where do we get to the situation where we can make a determination without disclosing all of the communications in the first instance and also knowing in what direction a defense or claim is going in terms of whether we would disclose it.

SENATOR PICKARD:

You referenced the attorney-client privilege that is a different kind of relationship than a doctor-patient relationship. Under NRS 49.2549, subsection 4, there is an exception disclosure of the communication, as otherwise required by law, which is broad language. It also requires a legal requirement. If you are talking about discovery which has legal requirements, you could make an argument that this relationship is different. The advocate has no involvement in the legal case, criminal or otherwise. How does the existing exemption not allow you to pierce this privilege under those circumstances? How does yours strike a better balance?

MS. BERTSCHY:

In my experience when we tried to litigate this issue, we have not been provided the discovery through the statute as written.

SENATOR SCHEIBLE:

Are we going to be asking the counselors and the advocates to determine what legal material is and turn it over?

MS. BERTSCHY:

It is my understanding that is how it works in the other privileged areas. It is the judge who makes the determination.

SENATOR SCHEIBLE:

Assume I am an advocate at the UNLV Women's Center where someone comes to me and we have two meetings; during the first meeting, she says she had an uncomfortable sexual encounter and felt weird about it. Two weeks later, she comes back and says she definitely did not consent. If there is a criminal case, both the prosecution and defense would want both of those statements. The logistical process you are proposing is that one party would say to the judge, "Hey judge, you need to talk to Counselor Melanie Scheible at the UNLV Women's Center, bring her in camera." I, as the advocate, would walk into the judge's chambers and say, "Here is what the victim told me at our first meeting,

and here is what the victim told me at our second meeting." The judge would then decide which parties get to learn which statements?

MS. BERTSCHY:

The defense would provide a subpoena for the records to the counselor, the counselor would oppose it and then through motion practice address this with the court. It could be as you are describing it—the counselor speaking with the judge in the courtroom without the defense present. That could be a possibility or providing documentation to the judge for review and a decision whether it should be provided, and then it would be provided to both sides.

SENATOR SCHEIBLE:

Advocates would be opposed. You would end up in a situation where you have advocates in court refusing to speak and judges trying to compel them to speak. Is your vision they would be held in contempt or charged with a misdemeanor? What are you going to do when advocates refuse to break privilege?

MS. BERTSCHY:

I do not envision this would lead to contempt.

ASSEMBLYWOMAN BACKUS:

In NRS 49.2549, subsection 4, the intent is if there were any other foreseeable waivers of privilege, such as mandatory reporting statutes, that is what that went to. In this situation, we have 15 years of this privilege. I do not want an amendment just to extend it to additional victim advocates to be completely thrown out.

Another aspect I was concerned about is in situations where there are witnesses. There is a witness exclusionary rule where the person is precluded to be at and present in the courtroom when the trial is going forward. One of the key functions of victim advocates is to be the person for that victim during a trial. The last thing I would want is a situation where the individual is forced to be outside of the courtroom because he or she is now a vital witness who has to testify. We ask that victim advocates be extended to universities so communication goes forward and the individual is not expected testify.

CHAIR CANNIZZARO:

I will close the hearing on A.B. 134 and open the hearing on A.B. 189.

**ASSEMBLY BILL 189**: Revises provisions relating to warrants for the search of a person. (BDR 14-958)

ASSEMBLYWOMAN SUSAN MARTINEZ (Assembly District No. 12):

In Nevada, there are no laws requiring law enforcement to specifically request a body cavity search when obtaining a search warrant. Nevada law authorizes the issuance of a search warrant to search a place or person if any property was stolen or embezzled, if the property was intended to be used as a means of committing a criminal offense or if the property consists of any items or constitutes any evidence to show that a criminal offense has been committed or that a particular person has committed a criminal offense.

Assembly Bill 189 prohibits a law enforcement officer, conducting a search of a person pursuant to a search warrant, from performing a body cavity search unless the search warrant contains specific authorization from the magistrate who issued the warrant to perform a body cavity search.

Section 1 of the bill states a search warrant must contain reasons to explain the necessity of a body cavity search by law enforcement, defines the term "body cavity" with respect to males and females and provides a definition of what a body cavity search entails.

Section 3 of the bill makes these mandatory provisions applicable to warrants issued on or after October 1.

SUMMER MERRILL:

I support A.B. 189. In Nevada, there are no laws to require law enforcement to specifically request a body cavity search when obtaining a search warrant for a suspect. Law enforcement can request a search warrant with the vague term "the person" and upon approval of a judge have the ability to do a body cavity search.

ERIC SPRATLEY (Executive Director, Nevada Sheriffs' and Chiefs' Association):  
We support A.B. 189.

A.J. DELAP (Las Vegas Metropolitan Police Department):  
We support A.B. 189.



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HOLLY WELBORN (American Civil Liberties Union of Nevada):  
We support A.B. 189. I wanted to read an excerpt from *Schmerber v. California*, 384 U.S. 757 (1966).

Search warrants are ordinarily required for searches of dwellings. No less could be required where intrusions into the human body are concerned. The importance of informed, detached and deliberate determinations of the issue whether or not to invade another's body in search of evidence of guilt is indisputable and great.

This bill solidifies this, and it is important moving forward before law enforcement officers are allowed to search the most intimate parts of an individual.

MIKE RAMIREZ (Las Vegas Police Protective Association):  
We support A.B. 189.

COREY SOLFERINO (Washoe County Sheriff's Office):  
We support A.B. 189.

MS. BERTSCHY:  
We support A.B. 189.

RICK McCANN (Nevada Association of Public Safety Officers):  
We support A.B. 189.

SCOTT EDWARDS (Las Vegas Peace Officers Association):  
We support A.B. 189.

ASSEMBLYWOMAN MARTINEZ:

We have laws in place that specify how, when and what property may be searched under a search warrant. We have laws in place that dictate how an officer may enter a house during a search and under what circumstances he or she can search the home. Protections should be in place when it comes to a law enforcement officer conducting a body cavity search on a human being, especially the most private parts of a human body. Assembly Bill 189 seeks to address this problem by requiring a law enforcement officer performing a body cavity search to have a warrant that contains specific authorization from a magistrate to conduct a body cavity search.

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CHAIR CANNIZZARO:

I will close the hearing on A.B. 189 and open the hearing on A.B. 31.

**ASSEMBLY BILL 31**: Revises provisions concerning an application for a certificate as a community manager or registration as a reserve study specialist. (BDR 10-223)

SHARATH CHANDRA (Administrator, Real Estate Division, Department of Business and Industry):

Assembly Bill 31 revises provisions concerning an application for a certificate as a community manager or registration as a reserve study specialist. I have submitted my testimony ([Exhibit M](#)).

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

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CHAIR CANNIZZARO:

I will close the hearing on A.B. 31 and adjourn this meeting at 9:10 a.m.

RESPECTFULLY SUBMITTED:

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Eileen Church,  
Committee Secretary

APPROVED BY:

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Senator Nicole J. Cannizzaro, Chair

DATE: \_\_\_\_\_

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
	B	3		Attendance Roster
A.B. 134	C	1	Assemblywoman Shea Backus	Testimony
A.B. 134	D	2	Serena Evans / Nevada Coalition to End Domestic and Sexual Violence	Testimony
A.B. 134	E	2	Cristina Hernandez / Jean Nidetch Women's Center, UNLV	Testimony
A.B. 134	F	2	Ashley Yuill / Jean Nidetch Women's Center, UNLV	Testimony
A.B. 134	G	2	Holly Ramella / Jean Nidetch Women's Center, UNLV	Letter of Support
A.B. 134	H	1	Inter-Tribal Council of Nevada, Inc. Domestic Violence Prevention Project	Letter of Support from Clarice Charlie-Hubbard
A.B. 134	I	1	Pyramid Lake Paiute Tribe Victim Services Program	Letter of Support from Kim A. Lowery
A.B. 134	J	1	Office of Community Engagement & Diversity Initiatives, Nevada State College	Letter of Support from Amey Evaluna
A.B. 134	K	1	UNLVCSUN Student Government	Letter of Support from Joshua Zerbel and Olivia Cheche
A.B. 134	L	1	Offices of the Washoe County and Clark County Public Defenders	Proposed Amendment
A.B. 31	M	3	Sharath Chandra / Real Estate Division, Department of Business and Industry	Testimony

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