MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-First Session
May 4, 2021

The Committee on Judiciary was called to order by Chairman Steve Yeager at 9:02 a.m. on Tuesday, May 4, 2021, Online and in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Rochelle T. Nguyen, Vice Chairwoman
Assemblywoman Lesley E. Cohen
Assemblywoman Cecelia González
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Lisa Krasner
Assemblywoman Elaine Marzola
Assemblyman C.H. Miller
Assemblyman P.K. O'Neill
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblywoman Shannon Bilbray-Axelrod (excused)

GUEST LEGISLATORS PRESENT:

Senator James Ohrenschall, Senate District No. 21

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager

Jordan Carlson, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

James P. Kemp, representing Nevada Justice Association
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Scott Davis, Deputy District Attorney, Clark County District Attorney's Office; and representing Clark County
Dagny Stapleton, Executive Director, Nevada Association of Counties
Warren Hardy, representing Urban Consortium
Matthew Richardson, Vice President, Nevada Association of Public Safety Officers
Tonja Brown, Private Citizen, Carson City, Nevada
Darren Dimaya, Juvenile Probation Supervisor, Department of Juvenile Justice Services, Clark County; and Secretary, Juvenile Justice Supervisors Association, Inc.
Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers; and Member, Nevada Law Enforcement Coalition
John "Jack" Martin, Director, Department of Juvenile Justice Services, Clark County
Michael Whelihan, Assistant Director, Department of Juvenile Justice Services, Clark County
Annemarie Grant, Private Citizen, Quincy, Massachusetts

Chairman Yeager:
[Roll was called and Committee protocol was explained.] We will now move on to our agenda. Members, we have two bills and a work session. We are going to take the work session first to get that out of the way. Many of our guests on the Zoom call are here for the work session, so that will allow them to move on with their day. At this time, I will hand it over to Ms. Thornton to begin with the work session. We will start with Senate Bill 9.

Senate Bill 9: Creates an exemption from licensing requirements for investment advisers to certain private funds. (BDR 7-423)

Diane C. Thornton, Committee Policy Analyst:
Our first bill on work session is Senate Bill 9 [Exhibit C]. Senate Bill 9 was sponsored by the Senate Committee on Judiciary on behalf of Lieutenant Governor Kate Marshall and was heard in Committee on April 14, 2021.

This bill creates a state-level exemption from licensure requirements for investment advisors to specific types of qualifying private funds as defined in federal law. The bill sets forth the following conditions an adviser must meet to qualify for an exemption:

- The adviser provides advice solely to one or more qualifying funds;
- The adviser is not required to register with the Securities and Exchange Commission (SEC);
- Neither the adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer pursuant to federal regulations;
- The adviser files with the administrator, who is the deputy of securities appointed by the secretary of state, any report or amendment thereto required by the SEC pursuant to federal regulations; and
- The adviser pays the fee required by the administrator.

Additionally, an advisor who becomes ineligible for the licensing exemption must comply with any applicable laws for licensure within 90 days of ineligibility. There is one amendment to this measure. The Lieutenant Governor proposed an amendment which does the following:

- It requires in section 4.5 that the securities administrator, Securities Division, Office of the Secretary of State (SOS), submit biennial reports to the director of the Legislative Counsel Bureau for submission to the Legislative Commission and also requires the report to be published on an Internet website of the SOS or by similar means.
- Additionally, it makes conforming changes in section 8.5 of the bill.

Chairman Yeager:
Are there any questions from Committee members on Senate Bill 9 as detailed in the work session document [Exhibit C]? [There were none.] At this time, I will be looking for a motion to amend and do pass.

> ASSEMBLYWOMAN NGUYEN MOVED TO AMEND AND DO PASS SENATE BILL 9.
>
> ASSEMBLYWOMAN GONZÁLEZ SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblywoman Hansen:
I am voting yes in Committee, but I am reserving my right to change my vote on the floor.

Chairman Yeager:
Thank you. I will note that everyone on the Committee has been doing a good job of telling me if they are going to change their vote on the floor. I would just ask that you continue to do that so we can limit the number of surprises that might happen on the Assembly floor. That helps things run smoother. Is there further discussion on the motion?

Assemblyman O'Neill:
I will be voting yes but reserving my right to change my vote, Chairman Yeager.

Assemblywoman Krasner:
I will also be voting yes today in Committee but will reserve my right to change prior to the floor vote.

Assemblywoman Kasama:
That would be a ditto.

Assemblywoman Hardy:
I will ditto as well.

Assemblyman Wheeler:
I am going to just go ahead and vote no.

Chairman Yeager:
I do not think we have any more discussion on the motion. Again, the motion is to amend and do pass Senate Bill 9.

> THE MOTION PASSED. (ASSEMBLYMAN WHEELER VOTED NO. ASSEMBLYWOMAN BILBRAY-AXELROD WAS ABSENT FOR THE VOTE.)

I will take the floor statement on Senate Bill 9. Moving along, that takes us to Senate Bill 71 (1st Reprint).

Senate Bill 71 (1st Reprint): Revises provisions governing unclaimed property. (BDR 10-398)

Diane C. Thornton, Committee Policy Analyst:
Senate Bill 71 (1st Reprint) was sponsored by the Senate Committee on Judiciary on behalf of the State Treasurer and was heard in Committee on April 22, 2021 [Exhibit D]. This bill revises various portions of the Uniform Unclaimed Property Act. Among other things, the bill:

- Defines "virtual currency" to exclude "game-related digital content," such as digital tokens or points that cannot be used outside of a game or game platform or otherwise monetized;

- Allows the unclaimed property administrator to initiate and facilitate the payment or delivery of property to an owner without the owner filing a claim in certain circumstances upon review and confirmation of the identity of the apparent owner;

- Revises provisions concerning a property holder's domicile, shortens the timeline for a holder to deliver property to the administrator, and requires a person making a claim on behalf of an estate to prove that he or she is affiliated with the estate. Documents generated in connection with such a claim are confidential;

- Requires the administrator to make a "good faith" effort to notify persons who have a statutory duty with respect to unclaimed property that the administrator intends to examine pertinent records;

- Allows the administrator to require that records be furnished in certain formats and authorizes the administrator to issue and enforce administrative subpoenas to obtain such records;

- Requires a property holder to maintain any records used to justify excluding certain information from a report required to be filed with the administrator; and

- Increases from 10 percent to 20 percent the maximum percentage of the value of property that a firm hired to locate, deliver, recover, or assist in the recovery of property may charge the property owner as a commission under certain circumstances.

There are no amendments to this measure.

Chairman Yeager:
Do we have any questions on Senate Bill 71 (1st Reprint) as detailed in the work session document [Exhibit D]? [There were none.] I will be looking for a motion to do pass.

> ASSEMBLYWOMAN NGUYEN MOVED TO DO PASS SENATE BILL 71 (1ST REPRINT).
>
> ASSEMBLYWOMAN MARZOLA SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.] Again, the motion was to do pass Senate Bill 71 (1st Reprint).

> THE MOTION PASSED. (ASSEMBLYWOMAN BILBRAY-AXELROD WAS ABSENT FOR THE VOTE.)

I will give the floor statement on unclaimed property to Assemblywoman Nguyen. That takes us to our third and final work session bill, Senate Bill 177.

Senate Bill 177: Revises provisions relating to the Account for Aid for Victims of Domestic Violence. (BDR 16-926)

Diane C. Thornton, Committee Policy Analyst:
Senate Bill 177 was sponsored by Senator Julia Ratti and was heard in this Committee on April 29, 2021 [Exhibit E]. Senate Bill 177 revises the eligibility of nonprofit organizations that provide services for victims of domestic violence to receive grants from the Account for Aid for Victims of Domestic Violence and renames the Account as the Account for Aid for Victims of Domestic or Sexual Violence.

The bill requires that an organization must provide services exclusively to victims of domestic violence in a county with a population of 100,000 or more (currently Clark and Washoe Counties) but need only provide services primarily to victims of domestic violence in a county with a population of less than 100,000. The bill also excludes nonprofits that provide services exclusively to victims of domestic violence from the requirement that they be able to shelter victims on any day at any hour and be able to store and prepare food in order to receive grants.

The administrator of the Division of Child and Family Services must allocate 75 percent of the money allocated to a county under this program for services for victims of domestic violence and 25 percent to services for victims of sexual violence. The number of grants that may be awarded in counties with populations of less than 100,000 is limited to one applicant to provide services for victims of domestic violence and one applicant to provide services for victims of sexual violence. In a county with a population of more than 100,000, grants may be provided to not more than two applicants providing services to each category of violence. The bill eliminates the requirement that 15 percent of all money allocated from the Account to a county whose population is 700,000 or more (currently Clark County) must go to an organization specifically created to assist victims of sexual assault. Additionally, the portion of the fee that is collected by a county clerk when issuing a marriage license that is used to fund the account is raised from $25 to $50.

Senator Ratti has proposed an amendment to the bill which adds cosponsors to the bill and those cosponsors are listed on the following page [page 2, Exhibit E].

Chairman Yeager:
Are there any questions on Senate Bill 177 as detailed in the work session document [Exhibit E]? [There were none.] I will take a motion to amend and do pass.

ASSEMBLYWOMAN SUMMERS-ARMSTRONG MOVED TO AMEND AND DO PASS SENATE BILL 177.

ASSEMBLYWOMAN NGUYEN SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman O'Neill:
I have got to say that I originally was a no on this bill, but then I was approached by some elected officials in Carson City who explained to me their domestic violence procedures and their need for additional funding. With that support and request from the local community, I will be a strong yes on this.

Assemblywoman Marzola:
I had asked to be added to the bill.

Chairman Yeager:
We have a request from Assemblywoman Marzola. Assemblywoman Summers-Armstrong, are you making the same request?

Assemblywoman Summers-Armstrong:
Ditto.

Chairman Yeager:
We have calls for a couple of additional sponsors to be added, and Senator Ratti is here with us and has agreed to do that, so we will make sure to process that in the amendment as well.

Assemblywoman Kasama:
I will be voting yes because I like the bill, but I will be reserving my right on the floor to change my vote.

Assemblywoman Hansen:
Oh boy, this is a terrible position to be in. I appreciate the conversations I have had in the last few days and I greatly appreciate the policy. I would love to be involved in the interim, but I voiced my concerns about the funding mechanism. I understand why you have to do that, but I will have to be a no. Even though I love that we will visit some other ways we could have a stable funding mechanism in the interim, I know that once we have a funding mechanism in place, it rarely gets changed. I had put on the record my ideas about visiting some of the other ways we could fund this. In the Legislature where we have found money before for our Las Vegas Raider's stadium, I am even for an appropriation. It is not about giving money to these organizations that do great work, it is just how we do it. I regret that I cannot support it at this time.

Assemblyman Wheeler:
Pretty much ditto. I do not think that this is the correct funding mechanism for it. I love the intent of the bill. I like what it does, and the money goes somewhere where it is really needed. However, the fact is that it should be coming out of the State General Fund; I do not believe that it should be coming out of an increase in fees, so I will be voting no.

Chairman Yeager:
Is there further discussion? [There was none.] The motion is to amend and do pass Senate Bill 177.

> THE MOTION PASSED. (ASSEMBLYMEN HANSEN AND WHEELER VOTED NO. ASSEMBLYWOMAN BILBRAY-AXELROD WAS ABSENT FOR THE VOTE.)

I am going to assign the floor statement on Senate Bill 177 to Assemblywoman González. That concludes our work session. We will now go to the beginning of our agenda. We will take the bills in order today. We have Senator Ohrenschall with us again this morning and he will be presenting both bills. At this time, I will open the hearing on Senate Bill 107 (1st Reprint).

Senate Bill 107 (1st Reprint): Makes various changes relating to the statute of limitations for certain causes of action. (BDR 2-872)

Senator James Ohrenschall, Senate District No. 21:
Today, I have the honor of presenting two bills. Both bills have to do with some issues regarding fundamental fairness. Senate Bill 107 (1st Reprint) has to do with access to justice. Senate Bill 107 (1st Reprint), in my opinion, tries to help make sure that an employee is able to pursue administrative remedies for either wrongful termination or a workman's compensation issue without having to worry about racing to the courthouse and filing a lawsuit. In my opinion, if Senate Bill 107 (1st Reprint) is passed, there will be less litigation because the administrative remedies through the Equal Employment Opportunity Commission (EEOC) or the Nevada Equal Rights Commission (NERC) within the Department of Employment, Training and Rehabilitation may be successful and there may not be that race to the courthouse.

I am very lucky to have J.P. Kemp with me, who is an attorney in Las Vegas who specializes in this area. With your permission, I would like to turn it over to him to give us some of the nuts and bolts and war stories from being in the trenches while representing workers. Then I am happy to answer questions.

James P. Kemp, representing Nevada Justice Association:
Senate Bill 107 (1st Reprint) contains a very important clarification in the law, in certain respects. The case that started this was *Patush v. Las Vegas Bistro, LLC* [135 Nev. Adv. Op. 46 (Sep. 26, 2019)], a case where an employee tripped and hurt herself and ended up getting fired for filing her workers' compensation claim. When she filed her lawsuit, it was more than two years but less than four years after the incident. When you look through the statute of limitations—*Nevada Revised Statutes* (NRS) 11.190—you do not find any specific reference to a claim for wrongful termination, wrongful discharge, or retaliatory discharge;

there is nothing of that nature. The federal courts have previously looked at this and analogized it to personal injury cases. The Supreme Court of Nevada had never addressed it until it came before them in the *Patush* case. In that case they also used an analogy to a personal injury or wrongful death statute, which is NRS 11.190, subsection 4(e).

As we looked at that, we felt that the average Nevadan could never have read that statute that talks about personal injury and wrongful death and come to the conclusion that it would apply to their case of wrongful termination. When we looked at it, we thought that in NRS 11.220, which is a catchall that provides four years for any cause of action that is not otherwise provided for in the statutes, it would appear that that statute would apply. Wrongful termination does not appear anywhere else, so the catchall four years should have applied. The Supreme Court of Nevada disagreed with that and went with the personal injury or wrongful death statute. We thought the average Nevadan should be able to read the statutes and determine how much time they have.

Senator Ohrenschall brought this bill to clarify that issue. It was determined that the two-year statute of limitations for wrongful discharge was a good time period when we were working with the stakeholders. When working through it, we also noted that sometimes people have charges of discrimination or other administrative complaints that are working their way through the administrative process, and paradoxically the cases with the most merit take the longest to work their way through NERC or EEOC. Sometimes that process takes more than two years, so you may have a situation where you would have to run off and file a lawsuit to meet the two-year statute if you had a companion claim for the common-law wrongful discharge. You would have to go and file the lawsuit before the administrative agency ever got through with their investigation and making their determination.

There you have section 1.5, which is an amendment to the original bill, which does call for a two-year statute of limitations for a retaliatory or wrongful discharge. However, section 1.5, subsection 2, does provide for a tolling of that time period while the case is pending before an administrative agency on a complaint or a charge. If someone has a pending charge at the NERC and you get to the two-year point, you do not have to worry about rushing off to the courthouse to file a lawsuit or else face losing your common-law claim; you will have a tolling of that time period while NERC or EEOC works its way through the administrative charge process. Then, just like when the NERC finishes and they give you a notice of right to sue, you get 90 days. We have factored in what is traditionally thought of as 3 days for mailing, and that is how we ended up at 93 days, because it would be the 90-day period plus the 3 days that it takes for the NERC right-to-sue letter to get to you in the mail. You would have either your full two years or, if the two years have gone by, you would have that additional 93 days so you could bring your claims together. These companion claims happen together very often. That is what section 1.5 of the bill does.

Section 2 of the bill is the amendment to the catchall to instruct the court not to do this analogizing to other causes of action. If it is not provided for by the Legislature in the statutes, then the court should just apply the four-year catch all. That is what it is there for.

There are examples of this. Sometimes it is not even consistent. The court, for example, in a case on intentional interference with prospective economic advantage, said it was four years while analogizing it to an unwritten contract; and in another similar case, they analogized to fault and said it is three years, so there is this inconsistency. The idea is that people ought to be able to read the statues and figure out what their time is without the court second-guessing them later on. Section 2 is an amendment to NRS 11.220, which calls for the court to not analogize and to just apply the catchall four years if the Legislature has not otherwise spoken as to what the time limit should be. That is what section 2 does and that comes from the experience with the *Patush* case that we have. I believe that covers what S.B. 107 (R1) is all about and I am happy to answer any questions.

Chairman Yeager:
We will take questions from the Committee.

Assemblywoman Summers-Armstrong:
Is there a companion workers' compensation case? This appears to be for wrongful termination. If there is another type of litigation going on, which one has the highest priority?

James Kemp:
We did have an earlier proposal that while a workers' compensation claim was working its way through that system, there would be the same tolling. That did not survive the amendment process. Usually, if someone has been fired because of a workers' compensation claim, then they would have two years from that termination to bring their claim to court. The workers' compensation claim will not toll it. There are some drawbacks to that because sometimes you get down to the end of a workers' compensation claim, and rather than put somebody through vocational retraining, the employer may want to bring that person back. That did not survive through the amendment process. If we do not have the NERC charge or some other type of whistleblowing claim where they complained through a government agency and they just have the workers' compensation claim, they will have to bring the case within the two-year statute of limitations under the bill as drafted.

Assemblyman Wheeler:
Is there not some administrative avenues that a person can take? Does the clock start after those administrative avenues are exhausted, or does it start immediately?

Senator Ohrenschall:
If Senate Bill 107 (1st Reprint) passes, under section 1.5, the time period for filing action would be tolled.

James Kemp:
From the time someone gets fired, they would have two years to file a claim. However, if they have a charge pending or some other administrative complaint, the time would be tolled. They would essentially get the greater of either the two years or the 93 days after the

administrative charge process is completed. It does not restart the clock; the clock still runs to the two years, but it gets tolled. It would be tolled during the time period that a charge is pending at the administrative level. The vast majority of cases do not go that long, but some of the ones with the most merit do take NERC two or three years to work their way through the claim. Sometimes they do get resolved if they find there is probable cause of discrimination. They go through a conciliation process to try and get the case settled, and that does frequently work.

Assemblyman Wheeler:
As of now, let us say someone goes to NERC, files a complaint, and it takes three years to work through the process. It is not in the person's favor, so they decide to sue. They could sue at that time. Would this bill add an extra two years beyond NERC's decision?

James Kemp:
No. As it currently stands under the court ruling for *Patush*, it is two years. At the end of two years, if NERC had not finished before then, they would have to go ahead and sue the employer at that point before NERC had finished its process. It does not add two years to the end of that process. You would have the original two years; or if the two years had gone by, you would have up to 93 days from the issuance of the notice of right to sue. It does not add an additional two years onto it.

Chairman Yeager:
Do we have additional questions from Committee members? [There were none.] I will ask the presenters to sit tight for a moment while we take some testimony on the bill and then we will return to them for any closing remarks. At this time, I will open up for testimony in support of Senate Bill 107 (1st Reprint). Could we go to the phone lines to see if there is anyone there in support? [There was no one.] I will close supportive testimony and I will open for opposition testimony. Is there anyone who wishes to testify in opposition?

Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County:
We are here in opposition to S.B. 107 (R1). I have a Deputy District Attorney from our Clark County District Attorney's Office in Las Vegas via Zoom with me here today. He is an expert, whereas I am not. I am here to testify in opposition. We have spoken with the sponsor and explained our concerns to the sponsor and, unfortunately, we have not been able to come to an agreement for a fix on this.

That said, with Chairman Yeager's indulgence, I would like to go down south via Zoom to our Deputy District Attorney, Scott Davis.

Scott Davis, Deputy District Attorney, Clark County District Attorney's Office; and representing Clark County:
Clark County is in opposition to this bill, not for what has been discussed already, but for what has not been discussed in section 1 of the bill. Section 1 of the bill eliminates the existing statute of limitations including the existing two-year statute of limitations for the tort claims. It would double that from two to four years, and this action will have significant

and negative impacts on federal Section 1983 [42 U.S.C. §1983] claims brought against Clark County as well as cities and state officials throughout Nevada. [There were technical difficulties and Mr. Davis repeated this first section of testimony.]

Section 1 of the bill gets rid of the two-year statute of limitations for tort claims. By doing that, tort claims would then fall under the catchall provision stated in section 2 of the bill, the current NRS 11.220, meaning that there would be a four-year statute of limitations for tort claims across the state. This will have significant and negative impacts on federal 1983 claims that would be brought against the county, cities, the state, and across the board, because when you double the state's statute of limitations for tort claims, the impact of that will be to double the statute of limitations for federal 1983 claims from two years to four years. This will create expanded federal liability for cities, counties, and other public entities like school districts, as well as for public officials and public employees. Public employees can be sued under Section 1983, including employees who are represented by labor unions; they are not exempt from this. By expanding the potential liability for these federal claims, we should expect it will result in increased workloads, cases, and costs for defending cases reaching back four years. It will also make it more difficult to defend the state or county and their employees on these types of claims.

By way of an illustration, at my current position I often represent prosecutors who have been sued or have had a Section 1983 claim filed against them. Of course, prosecutors are represented by unions anyway, but they can still be sued and often are. The way the federal courts operate, dismissal of that type of claim is not decided before the discovery stage. Therefore, you still go through the discovery process and the prosecutor can be made to answer questions and produce documents, et cetera, for a case that would not be four years in the rearview mirror, and all of a sudden they need to dig that old information up to answer those questions. This will obviously make it more difficult in those types of cases, especially if it is a case where the prosecution has been dismissed, because the prosecutor would have to recall something that happened four years ago on an old case. Also, we were to be able to comply with those discovery requirements. We had to pay attention to schedules for public records at all levels—the city, the county, the state; they would have to be rewritten because many of them are based on the existing two-year statute of limitations, because many records are kept based on that current statute of limitations.

Chairman Yeager:
Mr. Davis, if I could interrupt you for a second, I think your testimony may be misunderstanding what the deletion to section 1 of the bill does. The deletion of section 1 of the bill does not delete existing law; the existing law continues to exist. The deletion of section 1 of the bill simply removed the amendment that was being proposed in the first version of the bill to add action for wrongful termination of employment to the existing statutory language. I want to hand it over to Mr. Wilkinson to confirm that, because I think it might implicate the rest of your testimony in terms of the bill.

Bradley A. Wilkinson, Committee Counsel:
What you just said is correct, Mr. Chairman. Section 1 was deleted by amendment from the bill, but that means that NRS 11.190 is not affected in any way that changes the law.

Chairman Yeager:
I do not know if that helps with your testimony, Mr. Davis, but I do not think the bill is making any changes to the existing law that you are speaking to with respect to federal 1983 actions and the like. Given that, are there other portions of the bill that are concerning for you and Clark County? I think it would be appropriate to address those.

Scott Davis:
Thank you for that clarification. With that clarification, I will submit my comments, and I have nothing further to say. [Written comments were not received.]

Chairman Yeager:
I appreciate that; that is why we have legal counsel here. I just wanted to clarify that for the record. Mr. Ortiz, do you have anything to add?

Alex Ortiz:
I do not, but I will communicate with Mr. Davis about this and if we need to, we will respond in written format to either change our testimony to another position or leave it as is with an explanation as to why.

Chairman Yeager:
Do we have any additional testimony in opposition?

Dagny Stapleton, Executive Director, Nevada Association of Counties:
We were prepared to testify in opposition today and will refer to the conversation that you just had with Clark County. We will adjust our opinion accordingly to follow up.

Chairman Yeager:
Are there additional callers in opposition? [There were none.] I will now open it up for neutral testimony. Is there anyone in the neutral position?

Warren Hardy, representing Urban Consortium:
I was asked by the Urban Consortium to get on the record with similar concerns to Clark County, so we will go back and revisit this in the context of what we have just learned and get back to the Committee.

Chairman Yeager:
Are there additional callers in the neutral position? [There were none.] I will close neutral testimony and I will invite Senator Ohrenschall back to the table for concluding remarks.

Senator Ohrenschall:
I believe Senate Bill 107 (1st Reprint) would add clarity to the Nevada statutes. This would not only benefit workers who feel they have been wronged, but would also benefit employers, courts, and attorneys who practice in that area. Some information that I have is that the great majority of these actions are settled at the administrative level, such as at the Nevada Equal Rights Commission, and never end up in litigation. I think that if there is more time for the administrative remedies to work their course, which do not usually take the whole three- to five-year period, then I think we might see less litigation.

James Kemp:
I pretty much ditto what Senator Ohrenschall had to say. This will give an opportunity for parties to try and resolve their differences at the administrative level without having to rush out to the courthouse to meet a deadline before the administrative process is finished.

Chairman Yeager:
I will close the hearing on Senate Bill 107 (1st Reprint). That takes us to the next bill listed on the agenda. I will now open the hearing on Senate Bill 317 (1st Reprint). Senator Ohrenschall, we will give you a chance to present and then we will have some questions.

Senate Bill 317 (1st Reprint): Revises provisions relating to juvenile justice. (BDR 5-1016)

Senator James Ohrenschall, Senate District No. 21:
Members of the Committee, Senate Bill 317 (1st Reprint), in my opinion, is about fairness. Imagine if you or one of your loved ones were arrested and accused of a crime and you fought the charges and won a trial or had the charges dismissed. In that scenario the justice system worked, and you were not guilty and you were not convicted. But imagine that, when you were trying to rebuild the other parts of your life, it all fell apart and you were subject to losing your apartment, your home, your credit being ruined so you could not get a new apartment or a new car, and everything you needed to be able to do to get back on your feet was suddenly taken away from you.

Senate Bill 317 (1st Reprint) tries to ensure for juvenile justice officers and detention staff, those who work with children, that if they do pursue their right to fight these allegations and they succeed through trial or dismissal where there is no punitive action, similar to the current language in *Nevada Revised Statutes* (NRS) Chapter 289, that they are eligible for that back pay, and that they can land on their feet without facing the destruction of so much of the rest of their lives, even if they prevailed over their criminal charge.

Matthew Richardson, Vice President, Nevada Association of Public Safety Officers:
The bill intends to clarify and guarantee rights that are given under NRS 289.092. These rights are for officers that fall under NRS Chapter 62G. The officers are quasi-law enforcement/mentors/caseworkers/social workers, and they tirelessly connect families in

need with anything that might work for each family to get on the right track. My peers, the officers I work with, are outstanding individuals; however, we are not perfect. We may end up in the wrong place at the wrong time, we may get caught up in a bad situation with a friend or relative, and we also may be falsely accused by someone we may or may not know and there could be mistaken eyewitness identification or false forensic science. In working through our due process and justice system, juvenile probation officers, juvenile probation supervisors, and employees of juvenile services should be given the rights that other officers have.

This rides upon the outcome of the criminal prosecution—if the charges are dismissed, the employee is found not guilty at trial, or the employee is not subject to punitive action in connection with the alleged misconduct. *Nevada Revised Statutes* 298.092 gives this very right to other officers; however, the language is slightly different. It states in NRS 298.092 that if a law enforcement agency suspends an officer without pay pending the outcome of a criminal prosecution, the law enforcement agency shall reward the officer back pay for the duration of the suspension if the charges are dismissed, the employee is found not guilty, or the employee is not subjected to punitive action in relation to the alleged misconduct. The difference is the word "suspends." The county and agency director do not find that the word "suspends" is carried over to the Clark County Department of Juvenile Justice Services (DJJS), therefore we would like to codify in law that the employees of DJJS are given this right under the strict guidelines of NRS 62G already afforded to others under NRS 298.092.

This is not a scenario that falls into a solution looking for a problem. This has already happened to a DJJS employee. An employee who worked for DJJS was charged with a crime. After the resolution of this case, in which he was cleared of any charges, DJJS waited several months before bringing the employee back to work. He was out over seven months of work without pay.

We also agree that officers should be held accountable if they are found guilty. You are likely to hear my director profess that he wants officers to be held accountable. Again, we are only talking about officers whose charges are dismissed, who are found not guilty, or who are not subject to punitive action. Again, this is a right that is already given to officers under NRS 290.092. We want to make sure this right extends to employees listed under NRS Chapter 62G.

Chairman Yeager:
We have a couple of questions already.

Assemblywoman González:
I know you touched on one employee's experience in your presentation, but I was curious about how often this is happening.

Matthew Richardson:
I am not aware of all the personnel actions because discipline is a confidential matter. I do know of the one case. *Nevada Revised Statutes* Chapter 62G has not been around for a long time. I believe NRS 62G was enacted in 2013. I do know of the one case in which an employee was out over seven months.

Senator Ohrenschall:
Certainly, while the juvenile probation officers and detention staff are much like how we think of law enforcement officers, what I have observed while working as a juvenile public defender is that many of these people are also acting as social workers and mentors; they do try to be there for kids in very scary situations. Even though so many of these employees act as officers, they are also there helping kids get birth certificates, helping them get into academic credit recovery programs for high school, and trying to get them into drug treatment programs. They are law enforcement officers, but while we do not call them social workers, they are that as well. They are much more than what we think of as normal law enforcement. This bill would just clarify that the same protections in NRS Chapter 289 other law enforcement officers have would also be applicable here; if they do fight the charge and the charge is dismissed, they win at trial, or there is no punitive action taken, then they would be entitled to that back pay and they would not have to face the ruination of the rest of their lives, even if they had beaten the criminal charge.

Assemblywoman González:
In your experience when folks have these allegations, is it usually from children that they work with or is it outside stuff?

Matthew Richardson:
It is a combination of both. Under NRS Chapter 62G, they could be charged either in-house or on personal conduct. The statute does not differentiate where the charges would originate.

Assemblywoman González:
In your experience, are there typically charges dealing with the children themselves? I know you cannot comment, but I am curious about what kinds of allegations these officers are getting.

Senator Ohrenschall:
While I do not have that data in front of me, I think that is certainly something we could get. I wanted to make sure that I put on the record that Senate Bill 317 (1st Reprint), while it talks about trying to make the officer whole after the charges have either been dismissed, they have been acquitted at trial, or there was a lack of punitive action, there is nothing in this bill that would prevent suspension of the officer until the charges are dealt with. In fact, I think it brings more clarity because in section 1, we clarify that the 180-day period to resolve the charges begins after arrest. The statute did not have that prior. In my opinion, there is nothing here that would prevent the suspension of an officer pending the resolution of their charges.

Assemblywoman Cohen:
I have a question about section 1, subsection 6(a) where it is stating that the charges against the employee are dismissed. My concern is about what happens if it is a case where there is state adjudication and then dismissal. In those cases, people are basically admitting that this has happened, yet we are treating them as if they have gone to court and had an actual trial where the charges were dismissed or the charges were dismissed because the district attorney decided that they did not have the wherewithal to prosecute that type of thing.

Senator Ohrenschall:
This language parallels the language of NRS 289.092. While I certainly do not interpret that language "dismissed" as taking some kind of plea offer that would lead to a dismissal pending some kind of plea negotiation, I do not know if the courts have ruled on that yet, but that is certainly not how I read it and it is not my intent.

Matthew Richardson:
The language parallels NRS 289.092. We are really talking about charges that fall under NRS Chapter 62G. When you look up NRS Chapter 62G, you will see that there are certain charges that would require an employee to be placed on leave without pay. It is those charges that would remove them from work until the resolution of the court case. Then, the charges would have to be dismissed, the employee would have to be found not guilty, or they would have to not be subject to punitive action to be brought back to work. If they did, let us say, plea to a lesser charge but that charge still falls under NRS Chapter 62G, then they would be terminated from their employment. This bill only deals with situations where the charges are dismissed, not guilty, or not subject to punitive action. Just because you plea to a lesser charge does not mean you fall under Senate Bill 317 (1st Reprint).

Senator Ohrenschall:
Those enumerated charges which would prohibit employment under NRS Chapter 62G are listed in NRS 62G.223.

Assemblywoman Cohen:
The charges we are talking about are murder or manslaughter; felony involving the use of force; assault with intent to kill or commit sexual assault or mayhem; battery with substantial bodily harm; battery domestic violence that is punishable as a felony; and then a few others including the abuse or neglect of a child in violation of NRS 200.508 and NRS 200.5083. There is also a felony DUI in there. That might be disconcerting. Can you do adjudication on a felony DUI?

Senator Ohrenschall:
The way I interpret NRS 289.092 is that a plea offer is not the same as having the charges dismissed. I know that is a fairly new statute, so I am not sure if there have been any court rulings on that, but that is certainly not how I read it. If I am mistaken, I can reach out a lifeline to either legal counsel or try and get some more information at a future date for you.

Assemblyman Miller:
In the example that Mr. Richardson used of the employee who was off for seven months, was he off for seven months from the time of the arrest until he went back to work, or was that after he had won the case?

Matthew Richardson:
His particular case resolved in just a few months and the Department elected to bring him back several months after the case was concluded. He was eligible to come back to work previous to when the Department decided to bring him back.

Assemblyman Miller:
When we are looking at the potential of compensating them for what they lost during the time they were going through their court case, would this also include the amount of time that the Department decided to not bring him back? Or would it just end the day that he was cleared of charges?

Matthew Richardson:
I believe that the way the bill is written is for the time that the employee is placed on leave without pay. In that case, it would cover the entire time. It is important to note that we did work successfully with the Department to allow an employee to use their vacation, sick, or compensatory time in lieu of being placed on leave without pay. That is just to say that the employee would not be completely without funds for that time, but it is going to be used rather quickly. Seven months is a long time to go without any money, and seven months is quite an amount of time to rely on vacation or any paid time off that was stored up. We are really talking about the time an employee would be without pay.

Assemblyman Miller:
What I am trying to understand is this: After they are eligible to return to work, why would they remain on leave without pay for several additional months that would then have to be compensated for?

Matthew Richardson:
I do not know why the Department would not bring them back as soon as the employee is eligible to be brought back. That is a Department decision on why they would leave somebody in limbo like that. As far as I am concerned, if they choose to leave them on a leave without pay status, then the employee should be compensated since they were on leave without pay for charges that they were found not guilty of or that had been dismissed.

Assemblyman O'Neill:
Senator Ohrenschall, one of the questions I got was how are other Clark County employees treated? Do they have the same issue of being charged and being put on leave without pay? Or is this unique to DJJS?

Senator Ohrenschall:
That is a question that I believe Clark County, who will be testifying in opposition, would be better suited to answer. I know that the provisions of NRS 289.092, which mirror the provisions here in Senate Bill 317 (1st Reprint), apply to law enforcement officers. Those were enacted in 2019 and apply statewide to all law enforcement officers. As to how Clark County or any other county would treat other employees who are not law enforcement officers, it might depend on something like individual union contracts for those employees if they are represented by a collective bargaining unit. I think Clark County can answer better towards that.

Assemblyman O'Neill:
I thought I had heard earlier that these were not law enforcement officers and that we were talking about civilians within DJJS in Clark County.

Senator Ohrenschall:
What I said is that these juvenile probation and detention officers do sometimes act as social workers and mentors towards kids. In my opinion, they have a quasi-social worker role, but in most cases I would consider them law enforcement officers because they are working in a detention center while supervising children on juvenile probation.

Assemblyman O'Neill:
What is their category in peace officer standards? Are they category I, II, or III? That is what I am trying to understand.

Senator Ohrenschall:
This is where I would like to Zoom a friend, Mr. Richardson, with the Chairman's indulgence.

Matthew Richardson:
We are category II peace officers, sir.

Assemblyman O'Neill:
We are talking about a person who has potentially been charged with crimes, under the definitions that I heard earlier, that would be quite grievous. Is that an acceptable statement? I am trying to lay a foundation to my follow-up question.

Senator Ohrenschall:
Those enumerated offenses are listed under NRS 62G.223, and certainly I agree with that.

Assemblyman O'Neill:
I am having trouble understanding—if they have been charged, if the information or evidence is so serious and obvious that they can actually go forward with an employee's dismissal, why does the Department not just fire the employee to get them off the rolls? Has there been any discussion along that line?

Senator Ohrenschall:
I cannot speak for the Department, but Senate Bill 317 (1st Reprint) would certainly try to protect employees who pursue their right of being innocent until proven guilty, who follow the route of the criminal justice system, who have had their charges dismissed, who have been acquitted at trial, or who were not subject to punitive action. They exercised their right, and the goal of this bill is to try to protect them and make them whole because they have not been found guilty by the criminal justice system.

Assemblyman O'Neill:
But they could have been dismissed from the agency during that time period. They could have been dismissed before they were found guilty, correct?

Senator Ohrenschall:
By the prosecuting agency?

Assemblyman O'Neill:
No, by the employing agency.

Senator Ohrenschall:
They are going to speak later in opposition, and I think I better let them answer that.

Chairman Yeager:
We do have folks from the agency who will be speaking in opposition. They are with us on the Zoom call. I think they will be able to answer many of those questions.

Assemblywoman Summers-Armstrong:
Thank you, Chairman Yeager. I am going to yield to the next member with questions. I am very interested to hear comments from Clark County, and I may have a question or two then.

Assemblywoman Kasama:
Over the last ten years, has there been one person who was reinstated and the others, they lost in their lawsuit against the DJJS or they were charged? How often does it happen that somebody is charged and then found innocent? Is this a big problem?

Senator Ohrenschall:
It is a big enough problem that this legislation is important, to try to make sure that the same protections in NRS Chapter 289 that other law enforcement officers have to try to be made whole if they have denied the criminal allegations against them, and if those charges have been dismissed, were acquitted at trial, or there has been no punitive action—if we clarify that those also apply to these DJJS officers. As to the number of officers who may have had arrests or been charged, I would like to defer to Mr. Richardson. If he does not have that, perhaps Clark County may have that.

Matthew Richardson:
I cannot give you the exact numbers; I only know certain cases. Off the top of my head, I know a supervisor who was involved in something like that. I also know two different officers who had their charges dismissed, were found not guilty, or were not subject to punitive action; they could have fallen into that category. We have employees who have been charged and just leave the agency because of the way NRS Chapter 62G is written. I think it is important to note that NRS Chapter 62G has not been around for that long, and it actually details that these employees, after being charged with certain crimes, be treated a certain way. These laws have not been around very long and we are just now starting to get some of the ramifications of the law. We brought this bill forward so that for these officers, the law is clarified and guaranteed for other rights that are under NRS 289.092. To summarize, yes there have been cases and, again, we are just looking for the same rights guaranteed under NRS 289.092 for officers who fall under the provisions of NRS Chapter 62G.

Senator Ohrenschall:
If this were to pass and an officer is convicted of one of those enumerated crimes under NRS 62G.223, NRS 62G.225 specifically lists the process by which an agency can terminate that officer's employment because they would be prohibited from being employed by that juvenile justice organization if there is a conviction for one of those enumerated offenses.

Assemblywoman González:
In Senate Bill 317 as originally introduced, in section 2, subsection 5, paragraph (b), there was a sentence that said, "If the employee is placed on leave without pay, the employee may elect to use any sick leave . . . ." I think you stated that employees do use that, and I noticed that statement has been deleted in Senate Bill 317 (1st Reprint). I wanted to clarify. When an employee is on leave without pay, are they currently able to use their sick leave and vacation compensation time?

Senator Ohrenschall:
I would like to defer that to Mr. Richardson.

Matthew Richardson:
Yes, right now the Department does let an employee use their leave instead of going on leave without pay. However, these matters do take time to resolve and the amount of stored leave, whether it is sick, vacation, or compensated time, is easily exhausted before the case is resolved.

Assemblyman O'Neill:
Before charges are filed, is the employee still on paid leave or are they suspended at that time?

Senator Ohrenschall:
The current language in NRS Chapter 62G places the employee on leave without pay, so the issue here if this bill passes is, if they plead not guilty and deny the allegations and are acquitted, the prosecutor decided to dismiss the charges, or there was no punitive action, then they would have a right to back pay. The bill does clarify that they would have 180 days after their arrest to resolve this. One additional positive thing that this bill does is clarify the time period an employee has to get this resolved.

Assemblyman O'Neill:
Prior to the charges being filed, are they on leave with pay?

Senator Ohrenschall:
I do not believe so. If I am incorrect, Mr. Richardson, please go ahead and correct me if I am misspeaking.

Matthew Richardson:
It is really up to the Department. Usually upon an arrest, the Department will put the employee on leave without pay. I will let the Department speak on their own behalf, but that is the normal practice that we have experienced.

Assemblyman O'Neill:
I will ask Clark County to try to find out before charges are filed what the status is of the employee. That is what I am trying to determine.

Chairman Yeager:
Do we have additional questions from the Committee? [There were none.] We will give the presenters a chance to wrap up after we take some additional testimony on the bill. At this time, I am going to open up for testimony in support of Senate Bill 317 (1st Reprint). Is there anyone who would like to testify in support?

Tonja Brown, Private Citizen, Carson City, Nevada:
I see different areas and I am thinking outside the box because of personal experiences as a child and how a false accusation can come about, especially when dealing with children. I want to put this in the back of your mind because it is in my mind. When I was a young child, there was a friend of mine who levelled false allegations against another friend's father. He wound up going to jail, and later on she admitted she had lied about it because her parents were going through a divorce and it was a way to get attention. Now, I am not saying that this is going to happen, but I can see other areas where children can manipulate the system and make things up and people will get falsely accused. Should that happen and should that person get arrested only to have their charges dismissed, they should be given the opportunity to get their job and all the money back, including any sick leave or vacation pay that they may have lapsed on top of that. We would support this. They should be treated equally to officers. If they are found not guilty of their charges, they get back pay. It should apply to the juvenile justice system as well.

Darren Dimaya, Juvenile Probation Supervisor, Department of Juvenile Justice Services, Clark County; and Secretary, Juvenile Justice Supervisors Association, Inc.:
I would like to express my support for Senate Bill 317 (1st Reprint) on behalf of the Juvenile Justice Supervisors Association.

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers; and Member, Nevada Law Enforcement Coalition:
We are here today in support of S.B. 317 (R1). As can be seen in the first reprint, this bill has been reduced to accommodate the stakeholders and what is left, as Senator Ohrenschall stated, is simply what is fair for our juvenile justice officers and supervisors. As Mr. Richardson stated, NRS 298.092, which is part of the peace officer bill of rights, applies this same protection to police officers who are "suspended without pay," pending the outcome of their criminal case. This bill applies the same protections for juvenile justice folks who are placed "on leave without pay." Do not make the mistake; those two phrases are the same thing. Suspended without pay and leave without pay are the same thing. The Department of Juvenile Justice Services simply calls it something different. So, in its rarest, rawest form, it is to make sure that everybody is on the same playing field and that we do not play games further on down the road regarding the terminology that the agency is using. Senate Bill 317 (1st Reprint) is before you and we encourage your support.

Chairman Yeager:
Are there any more callers in support? [There were none.] I will now close testimony in support. I will now open up for testimony in opposition. Is there anyone who wishes to testify in opposition?

Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County:
Clark County is here in opposition to Senate Bill 317 (1st Reprint). We oppose Senate Bill 317 (R1) as originally proposed and as amended by Amendment 317 as well. We want to thank Senator Ohrenschall for trying to address some of our concerns; however, they were not all mitigated. One of the things we did agree upon was to strike the word "arraignment" in the bill and clarify that the clock starts after arrest, so that the 180 days is not just something that lives out there without a start date per se or the start date would be very delayed in time. I do want to state also that NRS Chapter 62G was amended first, at least this section of it, back in 2013 under Assembly Bill 217 of the 77th Session and then it was amended again in 2017 under Assembly Bill 411 of the 79th Session. Since that time, that is what we have been living under. There is a current amendment that we do oppose.

With me today to talk in more detail via Zoom, I do have our Clark County Department of Juvenile Justice Services Director, Jack Martin, and our Assistant Director, Mike Whelihan. I think they will be able to answer all of your questions that you have posed and any additional questions you may have. With that, Chairman Yeager, we can go to the Zoom call from Las Vegas.

John "Jack" Martin, Director, Department of Juvenile Justice Services, Clark County:
As some backstory, a couple of sessions ago, the Legislature recognized that in order to protect children in the care and custody of not only the DJJS but the Clark County Department of Family Services as well as our local child welfare agency, employees who are regularly working with children, need to be held to a higher standard of conduct. That legislation directed that employees charged with the crimes that Assemblywoman Cohen had mentioned previously—the charges covered under NRS 62G.223, which are murder or manslaughter; any felony involving the use or threat of force or violence with the use of a firearm or other deadly weapon; assault with attempt to kill or commit sexual assault or mayhem; battery which results in substantial bodily harm; battery that constitutes domestic violence; sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure, or an offense involving pornography and a minor; pandering or prostitution; abuse or neglect of a child; distribution or use of controlled substances or dangerous drugs; a violation of federal or state law prohibiting driving or being in actual physical control of a vehicle; abuse or abandonment of elderly or vulnerable persons; and any offense involving arson, fraud, theft, embezzlement, burglary, robbery, fraudulent conversion, misappropriation of property or perjury within the immediately preceding seven years.

These are not jaywalking charges. Prior to that legislation, when we had stepped onto this field, here in our own department we had employee staff members who had sexual assault charges currently on their rolls. They had domestic violence charges and other charges that were listed under NRS Chapter 62G. Senate Bill 317 (1st Reprint) continues the existing statutory language prohibiting the employee from working when ultimately not convicted of a charge that resulted in a leave of absence, that the county would be liable for all back pay.

Clark County has no control over staff being arrested for a crime. I am not there when an employee is arrested for a crime. When a domestic violence or a murder is occurring, neither the Department nor the county is there to be a party to that. We have no control over when the district attorney may file charges against the employee. The county does not control the filing date to start the court process; they do not control the setting of future court dates, postponements, plea deals, counseling, or dismissals or reductions for the crimes not covered by Chapter 62G. The county has no control over whether a victim will even show up for a court date. Simply put, victims of domestic violence oftentimes do not show up to testify. And just because a victim of domestic violence does not come and testify, sadly, that does not abdicate a domestic abuser from guilt. Even though an employee's innocence may be upheld or charges dropped, there are other issues that come up here and I am bothered that we are not continuing to have that conversation. The county does not control any aspect of this process other than protecting the children who are in our care and custody. I guess I am disturbed because those charges are pretty serious. We negotiated with staff that they can use their accrued time. We have allowed on numerous occasions for staff to go beyond the 180 days. The case that has been referred to in the presentation is one that we had no control over. I would like Mr. Richardson to come and have a conversation with us because we are not aware of a case where we did not return somebody to work immediately when we were required to.

Peace officers and DJJS employees should be held to a higher standard due to their ability to remove the freedoms and liberties of youth. We are peace officers. These same charges that I just listed off right here, if we were to remove the liberties from a child, would we be given the same protections under law for peace officers? As a side note, this bill would apply to me as well. I am not supporting a law that I am not willing to live by. I have never had domestic violence charges, I have never murdered anybody, I have never involuntarily murdered anybody, but I have a hard time understanding where the gig is. Senate Bill 317 (1st Reprint) as it is written [unintelligible] resolve it quickly. On numerous occasions we have had officers [unintelligible] cases, postpone cases, so at some point the taxpayers are now responsible for a legal proceeding which is not in the control of the Department but all of the legal ramifications and all the legal [unintelligible] that are operating through that, now the county and the department are to be held responsible by paying the back pay.

With all that said, Mr. Whelihan deals with this on a daily basis. Anybody who has any questions, I encourage you to ask either myself or Mr. Whelihan.

Chairman Yeager:
We do have a few questions for you.

Assemblywoman Summers-Armstrong:
I want to clarify something because the language is very broad, and I think I can get it if we were speaking of behavior or accusations that were lodged against someone as part of their job. But this is so broad that this could be something outside of their work life that could happen, and we would still be offering these benefits. Just to confirm, what I think I heard is that if a person has an accusation and they are on leave or suspension without pay, their job is protected until the conclusion of the matter, and if they are found not guilty, then they can come back to work and begin where they left off and earn their benefits and everything. Am I hearing you correctly?

Michael Whelihan, Assistant Director, Department of Juvenile Justice Services, Clark County:
The way it now works when a Chapter 62G arrest has occurred, [unintelligible] of the list of charges, that employee receives a form allowing them to choose whether or not they want to use their time. If they do not use their time, then that is their choice. I want to go back to what Director Martin was saying, that oftentimes cases are dismissed or plead down. DUIs are often dismissed or reduced to reckless driving, so innocence is not the truth. From the aspect of whether the incident occurred, we are not talking about innocence. If the case is dismissed or the charge is no longer covered under one of the offenses in NRS Chapter 62G, then we would return them to work immediately. They have to provide proof from either the judge or court records that they are not convicted of those charges, then they would return to work that next day. Sometimes they like to stay on leave a little bit longer because they have to get their things in order.

Assemblywoman Summers-Armstrong:
You said that they can choose to use their time—that was the first thing you said. If they have accumulated sick time, vacation time, or compensated time off, then they can choose that to be paid during the interim while their case is being resolved. Is that a yes or no?

Michael Whelihan:
That is correct.

Assemblywoman Summers-Armstrong:
They can use their time to have income if they are pending some charges. If their time runs out, then they would be on leave without pay until there is a resolution of those charges. Is their job position being held while these charges are being resolved? If so, for how long?

Michael Whelihan:
The law states it is a minimum of 180 days for us to hold their position. The Department has not started the clock, so to speak, [unintelligible] charges have been filed. We have been fair, especially with some of the DUI cases which can take a long time to get the toxicology report back. Some of these people who have stayed over the six months, make sure that they do not ask for postponements and push the clock back. If they do, then we will start the clock, but we usually give them an opportunity to go to court first.

Assemblywoman Summers-Armstrong:
I think Assemblywoman Cohen alluded to this earlier. You spoke specifically to a DUI charge and that it is not necessarily that a person is found innocent, but that their charge could be plead down, or something else that does not necessarily mean that they are innocent. How do you handle that? What do you do when a person has a DUI and they get it plead down to something else?

Michael Whelihan:
If they have a DUI and it gets reduced so that their charge is no longer listed under NRS Chapter 62G, then they would return to work the next day.

Assemblyman Wheeler:
Mr. Martin, I am trying to wrap two things together here. There is criminal liability and there is liability for the Department. According to this bill, if someone were to commit an infraction that was in violation of the Department's policy and be charged criminally; if you do your investigation and find that the infraction was in violation of Department policy; and if the court finds that the same infraction was not a crime and dismissed the case, would you still have to pay this person the back pay even though what they did was definitely out of Department policy and was a terminating or suspension offense?

Michael Whelihan:
With this new law, we would have to pay them. We do have the option of doing an investigation, but in our process currently, we have to be in compliance with the law given the 180 days and wait for the court result. We do have a case pending that we are 14 months into. We have been waiting for arbitration for two months because the charges were dismissed, but the off-duty conduct was so egregious, we terminated the employee. But here we are almost a year and a half later by the time of the resolution and [unintelligible] the person gets back pay.

Assemblywoman Krasner:
You were breaking up during your testimony, so I am trying to clarify if this is what you said. Under NRS Chapter 62G.223, if someone is charged with sexual assault or battery that constitutes domestic violence that is punishable as a felony, and if the victim does not show up for court, the charges could be dismissed. If this bill passed, that person could not only be reinstated to their job, but receive back pay. Is that correct?

Michael Whelihan:
That is correct. We have a current case that constitutes domestic violence that has a kicking down of a door, involvement with a knife, choking, with a ten-year-old and an eight-year-old on 911 screaming for the police on the call, and the charges were dismissed because the victim did not testify, which is common with over 35 percent of domestic violence cases being reduced or the other people do not show up. We have had nine DUIs and none of them have gone to trial; they were all reduced. That does not mean the DUI did not occur.

We had a gentleman who left a party and smacked his car into another car, and they had to use the jaws of life to get him out. He was drunk but the charges were dismissed, and he returned to work. The law, when you are talking dismissal versus innocence or guilt, we feel differently. Someone asked earlier about how common this scenario is. There have been 13 cases since 2014. Nine of them were for DUIs, one was for murder, and three were for domestic violence.

Assemblywoman Kasama:
We are referring to how this is the same language in NRS 289.092 for other law enforcement. In that section, is the crime that they are charged with the same for other departments in that it would include off-duty charges? Or is it only for the other departments' charges that they happen on duty? Because it seems to me that, if this only applied to while you were on duty, then it is in the course of your line of work. And if the charges appear there, then it would make sense for back pay. But I understand what you are saying, where back pay can be applied to cases outside of work where the county has no control. So I am curious, for the other law enforcement departments, if NRS Chapter 298 is all-encompassing as well, whether it is during work or after hours?

Jack Martin:
I cannot speak to other law enforcement departments; I can only speak for our department and our department decides to deal with all on- and off-duty behavior by all of our staff.

Assemblyman O'Neill:
I want to get back to some of my original questions. Does Clark County handle the rest of their employees the same way if they are charged with a crime? Are they suspended without pay?

Michael Whelihan:
We have approximately 430 staff, and 230 are sworn peace officers, so we have approximately 200 who are not sworn peace officers to which NRS Chapter 289 does not apply. *Nevada Revised Statutes* Chapter 62G does apply to everyone who works in the Department, so we have given the same benefits towards our civilian staff as to our peace officers.

Assemblyman O'Neill:
There is often a period of time between an incident and the filing of criminal charges. During that period of time, is the officer suspended with pay, suspended without pay, left on active work status—what happens to them in that interim period?

Michael Whelihan:
In that circumstance, NRS Chapter 62G would apply. As I mentioned earlier, we would give them a letter from the time of arrest. From the time of arrest, we allow them to use their time or not use their time; that would be up to the staff member. Suspension under our collective bargaining agreement is a punitive action, but in NRS Chapter 62G, it is not a suspension, it is placing them on leave without pay, but we afford them the opportunity to use their compensated time off.

Assemblyman O'Neill:
I must not be explaining this correctly, so let me work through this. There can be an incident on May 5, and I am not charged until May 31. During that time period, what is my employment status? Am I getting paid? Am I working?

Jack Martin:
From the minute you are arrested, you are not working. You have the option to use your time during that period until the charges are brought forth. From the minute the employee is arrested, they are not working.

Assemblyman O'Neill:
Up until the time I am arrested, I am still on the schedule?

Jack Martin:
Yes. Up until you are arrested, you are an employee and you are doing everything you are supposed to be doing. After you get arrested, that is when all this comes into play.

Chairman Yeager:
I think we will have to leave it there for questions given the time we are at this morning. Mr. Martin, Mr. Whelihan, thank you for presenting. We are still on opposition testimony. Mr. Ortiz, do you have anything further you would wish to add?

Alex Ortiz:
I just want to thank you for your time today. I would also like to thank Sentor Ohrenschall for working with us and the proponents of this bill.

Chairman Yeager:
Could we go to the phone lines to see if there is anyone in opposition? [There was no one.] I will close opposition testimony and open neutral testimony. Is there anyone who would like to testify in the neutral position? [There was no one.] I will close neutral testimony and invite Senator Ohrenschall back for concluding remarks. Senator Ohrenschall, we did have one additional question that was posed. The question was whether this bill only applies to Clark County or does it apply statewide to all juvenile justice agency employees?

Senator Ohrenschall:
As S.B. 317 (R1) is currently drafted, it amends NRS Chapter 62G, specifically the part dealing with counties over 700,000 population, so this bill is specific to Clark County. I want to thank all the members for their attention and good questions. I do believe that this legislation is very similar to Senate Bill 242 of the 80th Session that enacted NRS Chapter 289 and that said if law enforcement officers are accused of a crime and if they are acquitted, have their charges dismissed, or there is no punitive action taken, then they would have a right to be made whole and not face possible financial ruin, even if they exercise their right to declare their innocence. This bill parallels that.

I want to point out to the Committee that this language also includes that even if there were no charges filed, if there were some kind of incident that happened on the job and if the employee was subject to punitive action in connection with the alleged misconduct, I believe this would also preclude them from back pay. Certainly, if there was something where no criminal charges were filed, I think that language could preclude that employee from back pay if the agency did subject them to punitive action. I think that that takes care of those concerns. I was able to work with Clark County prior to the hearing in the Senate, and we were able to achieve consensus on section 1, but not on the latter sections. I am committed to continue working with them and the stakeholders. I would love to bring an amendment in order to have consensus from everyone and I will keep working on that, but I believe that even in this form, this is very fair legislation that tries to help protect innocent people.

Matthew Richardson:
I have just two things to clear up. Mr. Whelihan was speaking about a domestic violence case in which a witness did not show up. The charges on that case were dismissed at a preliminary hearing, just for the sake of complete accuracy. I want to thank Assemblyman O'Neill because this is exactly why we are here. He kept asking whether employees are suspended once these charges are filed or are they suspended after arrest? That is the whole problem because the language says "suspended." Our agency does not say that we are suspended, they just say we are placed on leave without pay, but when you look at NRS 289.092, they use the same language that Assemblyman O'Neill was using, that we are suspended. The nuances of that language are exactly why we are here; that is, to clarify. I also want to make it clear that employees who are found guilty, we do not think they should be working with us either, and we are here for the children. Again, we are talking about employees who are wrongfully charged through something like misleading forensic science or mistaken witness identification, those types of things. We are just looking for the same rights under NRS 289.092.

Chairman Yeager:
I will now close the hearing on Senate Bill 317 (1st Reprint), and that takes us to our final agenda item which is public comment. Could we go to the phone line to see if we have public comment?

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
Washoe County Sherriff's Office Sergeant Jason Wood is on administrative leave after his second DUI. Sergeant Wood was arrested for DUI on Friday, April 30. He was booked into the Washoe County jail shortly before midnight on Friday and charged with DUI going 10 miles per hour over the speed limit and failure to maintain lanes. Wood was arrested for DUI previously in March 2016. He was sentenced to complete nine hours of DUI school and attend a victim impact panel. He faced no apparent repercussions from the Washoe County Sherriff's Office.

In August of the same year, Sergeant Wood initiated the traffic stop with Kyle Zimbelman which resulted in an officer-involved shooting and Kyle's death. In 2017, Wood released his canine on a man after he surrendered to the police. Video of the attack on the community member went viral and had over one million views. Washoe County then had to foot that bill for the lawsuit. Sergeant Wood also shot and killed Robert Hampton on November 5, 2014—again, another death of a community member at the hands of the police, and Washoe County District Attorney Hicks dragged his feet on releasing the report. The report was released on May 26, 2016, 568 days later. They all knew of Wood's past when he took office in 2018, and what was one of his first acts in office? Promoting a bad cop to sergeant. Washoe County Sheriff Darin Balaam recently said, It is past time that we hold law enforcement officers accountable for deplorable actions. It is time for him to do that within his own department. I think *Nevada Revised Statutes* Chapter 289 needs an overhaul completely.

Chairman Yeager:
Are there additional callers on the public comment line? [There were none.] I will close public comment. Is there anything else from Committee members? [There was nothing.] I have a couple of reminders for the Committee. Tomorrow we are taking our Committee photo, so please be in this room at 8:15 a.m. tomorrow and wear your best because you will be memorialized in the Assembly Judiciary Committee photo. The meeting tomorrow will start at 8:30 a.m. We will have two bills on the agenda tomorrow, and I believe we will be able to get through those in a timely fashion. On Thursday, we have three bills, but we will be starting at 9 a.m. Friday is still up in the air. This meeting is adjourned [at 10:58].

RESPECTFULLY SUBMITTED:

____
Jordan Carlson
Committee Secretary

APPROVED BY:

____
Assemblyman Steve Yeager, Chairman

DATE: ______________________________

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is the Work Session Document for Senate Bill 9, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit D is the Work Session Document for Senate Bill 71 (1st Reprint), presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit E is the Work Session Document for Senate Bill 177, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.