

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eighty-First Session
February 19, 2021**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:04 a.m. on Friday, February 19, 2021, Online. 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 Shannon Bilbray-Axelrod
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:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Ashlee Kalina, Assistant Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager
Linda Whimple, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Heather Proctor, Chief Deputy Attorney General, Office of the Attorney General
Christine Jones Brady, Second Assistant Attorney General, Office of the Attorney General
Sheryl Serreze, Deputy Attorney General, Office of the Attorney General
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Jim Hoffman, representing Nevada Attorneys for Criminal Justice
Tonja Brown, Private Citizen, Carson City, Nevada
Annemarie Grant, Private Citizen, Quincy, Massachusetts
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Bailey Bortolin, representing Legal Aid Center of Southern Nevada; Washoe Legal Services; Southern Nevada Senior Law Program; and Volunteer Attorneys of Rural Nevada
Stephanie McDonald, Directing Attorney, Family Law Self-Help Center, Legal Aid Center of Southern Nevada
Liz Davenport, Legislative Aide, American Civil Liberties Union of Nevada
Benjamin Challinor, Policy Director, Faith in Action Nevada
Tess Opferman, representing Nevada Women's Lobby
Steven Cohen, Private Citizen, Las Vegas, Nevada

Chairman Yeager:

[Roll was called. Committee protocol and rules were explained.] We have two bills on the agenda today. I will be presenting or copresenting both of these, so I will hand the virtual gavel to Vice Chairwoman Nguyen to conduct the two bill hearings.

[Assemblywoman Nguyen assumed the Chair.]

Vice Chairwoman Nguyen:

I will open the hearing on Assembly Bill 104. Assemblyman Yeager emailed his conceptual amendments on A.B. 104, so hopefully everyone on the Committee was able to see it. I believe it is his intention to be presenting off the proposed amendments [[Exhibit C](#)].

Assembly Bill 104: Revises provisions relating to wrongful convictions. (BDR 3-586)

Assemblyman Steve Yeager, Assembly District No. 9:

Before I get started, I want to let the Committee know that I have been in discussions with the Las Vegas Metropolitan Police Department, the Office of the Attorney General, and the public defender's office about potential amendments to the bill. We have not reached any consensus there yet and I am not sure if we will, so I do not think it makes sense to talk too much about what some of those proposals might be at this time. If we ultimately agree on further amendments, I will certainly explain those to the Committee and go over them before we would vote on the bill.

To really understand the bill in front of you, Assembly Bill 104, you have to first understand Assembly Bill 267 of the 80th Session. It did something that I think is really important. It provided compensation for those who had been wrongfully convicted and incarcerated in our state. Many people helped make that legislation a reality, and I am most thankful for their work. It was certainly a long time coming as Nevada was one of the minority of states that did not provide such compensation.

For those of you who were on this Committee last session, you will remember the hearing on that bill was very emotional as we heard from Mr. DeMarlo Berry, who had been wrongfully incarcerated in Nevada for nearly 22 years, yet when he testified he was full of grace and forgiveness. I am not sure if there was a dry eye in the committee room once Mr. Berry finished his testimony. I know that not many of us have free time in this legislative process, but if you do have an hour or two in your day, I would certainly recommend going back and watching Assembly Bill 267 of the 80th Session because I think it gives you the sense of the enormity of what we have the privilege of doing in this building. I am proud that the bill had bipartisan cosponsors, passed both houses of the Legislature unanimously, and was signed by Governor Sisolak.

I tell you that because A.B. 104 makes some changes to the legislation that we passed last session, and those changes came as a result of feedback from the Attorney General's Office. It is the Attorney General's Office who defends these lawsuits. They are technically named the defendant in the lawsuit and they negotiate these lawsuits. They were able to provide some suggested changes to make the law clearer, easier to understand, and easier to administer. It has been an absolute pleasure to work with them on the language in this bill as well as the proposed amendments over the last few months, and I am very thankful for their collaboration on this issue.

I would like to hand it over to Ms. Proctor at the Attorney General's Office to give you some additional background on how Assembly Bill 267 of the 80th Session has been working out in the real world and then take you through the bill, the conceptual amendment, and then we will be happy to answer any questions.

Heather Proctor, Chief Deputy Attorney General, Office of the Attorney General:

In June 2019, the Legislature passed Assembly Bill 267 of the 80th Session, codified in *Nevada Revised Statutes* (NRS) Chapter 41, which authorizes a person who is not currently incarcerated for any offense and who was wrongfully convicted and imprisoned in this state, to bring an action for damages and other relief in any state district court. Assembly Bill 267 of the 80th Session became effective October 1, 2019.

Since the enactment of the wrongful conviction compensation statutes, the Nevada Attorney General's Office has worked with claimants in balancing the state's obligation to be fair and just with its responsibility to ensure that it is not overwhelmed with enormous monetary liability. To that end, the Office ensures every claimant complies with NRS 41.900 and establishes, by a preponderance of the evidence, that they did not commit the crime for which they were convicted.

As with any new law, through enactment the Attorney General's Office discovered that the existing law required clarification, uniformity, and certainty for the state and claimants alike. This led to the proposed amendments in A.B. 104. To be clear, the intent of the wrongful conviction compensation statutes, as addressed in the 2019 legislative history, was to provide monetary support for persons recently released from incarceration to permit them to begin rebuilding their lives, reentering society, and doing what the state can to restore their dignity and life after years lost having been wrongfully incarcerated. An award does not place blame or find fault. Rather, the person is provided a chance to live a normal life, with a certificate of innocence permitting the claimant to move forward without the wrongful felony conviction looming in their background and at every traffic stop, and money to start that life and the necessary provisions of life—from medical care and counseling, to advanced education, to reentry and financial literacy programs. As many of these claimants are also seeking monetary compensation against a county or state agency through a 1983 civil rights action [42 U.S. Code § 1983], which typically takes years to resolve, the law includes an offset provision requiring a claimant to reimburse the state for the money paid for the length of incarceration.

Section 1 of A.B. 104 revises NRS 41.910 to clarify the documents to be sealed following the issuance of a certificate of innocence, and the confidential nature of such proceedings. Section 2 exempts the state from the restrictions of an offer of judgment, as well as prejudgment and postjudgment interests. Again, I return to the intent of the bill, which is to permit the claimant sufficient funds to restart their lives while they await larger settlement funds from civil rights matters without incurring unnecessary additional costs for the state. Section 3 provides clarification for the claimant and the state in calculating the monetary award for the length of incarceration.

During the committee hearings on A.B. 267 of the 80th Session, Assemblyman Yeager and the Innocence Project stressed that the payments under these new statutes were not intended as a double award. Again, it was intended only to permit the claimant the ability to return to a normal life pending settlement of a 1983 action. To that end, section 4 clarifies the language of the offset provision to bring it in line with the original legislative intent. It also

clarifies for all parties what settlement funds are subject to the offset. Assemblyman Yeager mentioned that he submitted some amendments, which I would like to briefly discuss [\[Exhibit C\]](#).

In implementing the law, the Attorney General's Office determined that caps were necessary for the additional costs a person could claim under the statute. No such caps currently exist. We found this meant, for instance, that a person wrongfully incarcerated for 5 years would be entitled to a lesser amount of damages but the same amount of benefits in both monetary value and length of award as someone wrongfully convicted and incarcerated for 30 years. A person should not receive benefits for a period that exceeds their original incarceration. Again, the intent of the statute is to give the person assistance in returning to normal life, not a lifelong windfall.

In addition, the State Board of Examiners requested some certainty in the costs that would be sought from the Reserve for Statutory Contingency Account. This led to the additional proposed caps in section 3, which serve to: (1) clarify the costs a claimant can pursue; (2) maintain the assistance a claimant requires to return to normal society; and (3) create certainty for the Board of Examiners to budget for the additional expenses by providing a maximum potential cost for those additional expenses.

Finally, section 4 acts as a gatekeeper for the offset provision. It is possible for a claimant to commence a civil action in any state or federal court throughout the country, not just in Nevada. It is impossible for the Attorney General's Office to track every claimant throughout every potential state or federal court for years to determine when and if they receive another settlement related to their wrongful conviction. The proposed amendment in section 4 places the burden on the claimant to inform the state of any such settlement so that the state can enact the offset provision and recover the appropriate funds from the claimant.

Assemblyman Yeager:

Much like the last couple of days, I think you are going to hear some opposition testimony that wishes the bill to go further or to not have any monetary caps on damages. Sometimes the prosecuting agency in criminal cases is the Attorney General's Office, so it is the state prosecuting the case. But more often than not, prosecutions are initiated by local government entities, such as county district attorney's offices. I mention that because in these cases that we see, the prosecution and the investigation were done by a local government entity. I think you can ask yourself why the state is providing compensation if something went wrong in the local government prosecution. Existing claimants probably have claims against the local government in the form of a 1983 federal civil rights action. Those cases take a long time to go through the system.

In setting this up, we wanted to basically have the state be able to make that person as whole as they can up front, and if and when that person recovers from the local government, then the state would be reimbursed. The state legislators need to balance the need for justice and fairness with our fiscal responsibility as well. In coming up with this bill and the amendments, we realized it is really hard for the state to budget for what they would

potentially be on the hook for because we really did not have limits and well-defined definitions.

I appreciate the opposition you are going to hear and I, like many of you, would probably love to give even more compensation. As stewards of the state's monies, we have to be very aware that we have to be fiscally responsible in this role as well. We are still working on some concepts, but for now I think this is the most fair way to process these claims, realizing it is not often the state that really did anything wrong in these cases. This is not to say the local governments did anything wrong. People are people. We certainly make mistakes in what we do, and the intent here was to make sure we are compensating fairly but protecting the state from huge financial liabilities. For those of you in the last session, that was a very delicate dance to have to conduct. I was not sure this bill was going to pass until the last day of session because we had to get it through money committees.

I appreciate the time to make those additional comments, and we will be happy to answer any questions from the Committee at this time.

Vice Chairwoman Nguyen:

Are there any questions from the Committee?

Assemblywoman Summers-Armstrong:

Would you elaborate on section 4, subsection 4, and expand on what this means? I am not clear about "The calculation of an award of damages or a settlement amount pursuant to this section must not include" Would you clarify that?

Assemblyman Yeager:

There are two buckets of awards that a claimant would get. The first one is based on the amount of time they were incarcerated. That is not in section 4. You will see that in section 3 of the bill. That is how many years you were in times a monetary value per year. Your question relates to section 4, subsection 4. That section talks about the additional benefits that can be granted to the claimant, such as housing assistance, financial planning, educational assistance, and health care.

Heather Proctor:

Assemblyman Yeager is exactly right on point. There are essentially three different areas of funds coming into this. The first is the compensation for the years incarcerated. The second are the attorney's fees, which are capped at \$25,000 pursuant to the statute. The third are the additional benefits such as medical care, higher education, and literacy programs. Section 4, subsection 4, clarifies that if there is a subsequent award from a 1983 action or another civil action challenging the wrongful conviction, the individual is responsible for paying back only the lump sum or the amount for the time incarcerated. They do not have to reimburse either the attorney's fees or those additional benefits such as higher education and medical care.

Assemblywoman Summers-Armstrong:

That is a perfect explanation. I was concerned that they would have to include attorney's fees, which we all know can be quite steep, and that would have a serious effect on what they would be able to maintain as part of their reciprocity. Thank you; I appreciate the clarification.

Assemblywoman Cohen:

I have a question regarding section 4, subsection 3, and the notification required by the claimant to the Board of Examiners within six months of receipt of award damages [page 2, [Exhibit C](#)]. I understand that we are not looking to give two different awards and that we are hoping to get people started off on the right path while they get their federal claim resolved. I am a little concerned about this because the claimants have often been in prison for years. Some of them were very young when they went into prison and they are coming out years later to a lot of hoopla and people coming out of the woodwork, and a lot of things going on and learning to become part of society. I am concerned about putting this obligation on them. I imagine that their heads are just spinning and are going to spin for months or even years. Even though we are offering some financial literacy help, they are still juggling a lot. Would you address it and if it is fair to put that obligation on them?

Assemblyman Yeager:

I certainly understand the concern. Without fail, these claimants have attorneys who are working on their cases, whether it is here in Nevada or the federal case. I think having the attorney as a safeguard is going to help understand that there is an obligation for the claimant, if they are to receive a future settlement or award, to notify the state within six months. I would anticipate that most of those cases have the same attorney. It obviously reads as the claimant, but I think practically speaking it is going to be counsel for the claimant.

The reason that provision was put in is that it is hard for the Attorney General's Office to know about all of these cases going on, and it is to protect the state and make sure the state is reimbursed if there is an award against a local jurisdiction. It essentially covers the state's cost and the state gets reimbursed. I understand the concern from the claimant perspective, and I think the appearance of counsel is almost always going to solve that problem from a practical standpoint.

Heather Proctor:

I would echo what Assemblyman Yeager stated. Unfortunately, we do not have the resources to track all these potential clients. For an example, one of the individuals who was mentioned during the legislative history last session and one of the individuals we already settled with was Cathy Woods. A significant event in her case occurred in the state of Louisiana. Realistically, she could have initiated the 1983 action in Louisiana, and we would never have known. That is the issue that comes with this.

In addition, these 1983 actions can take many years, and we simply do not have the resources to continue checking in and determining if these individuals have received a subsequent

payment. As Assemblyman Yeager mentioned, we have not had any cases yet where the individual was not represented by the same counsel as in the state action. We have worked closely with them. Again, we settle our matter and the 1983 action continues for several years thereafter. This is simply a way of ensuring that the state can get some of the benefit back at some point and allow the state the recovery. The purpose of this is not a windfall. It is to keep that individual healthy and getting him back on track so that he can proceed with the 1983 action.

We also mentioned in our state orders in all of these actions that it is a requirement that the individual notify when they receive that windfall. We want to have that in the statute just as a precaution.

Christine Jones Brady, Second Assistant Attorney General, Office of the Attorney General:

Another thing I would like to point out is that the language is "may" language, permissive language, so failure to do so may impact an additional benefit provided under this statute. When we were discussing this amendment to the bill, we were contemplating that it is permissive because the person would have an opportunity to appear before the Board of Examiners or appear before the court that presided over the matter in the first place, and if they were having some difficulty or they were in a mental health institute for a while, or whatever was going on in their lives, they could explain and perhaps provide the cause. It is permissive language rather than "shall," and that is why we went with permissive.

Assemblywoman Cohen:

I would point out that Ms. Woods does have mental health issues, so that is a little concerning to use her as an example. Hopefully, she has proper counsel who is doing their job. Are the claimants themselves given something that says what those obligations are so they know in case there is a problem with their attorney? Attorneys die, cases get passed off to other attorneys, attorneys get fired, or there might be counsel in different states. I can imagine a scenario where something falls through the cracks.

Sheryl Serreze, Deputy Attorney General, Office of the Attorney General:

I can assure you that in every order that is entered in the state court litigations that the Attorney General is responding to these wrongful conviction compensation cases. We did provide Chairman Yeager with a copy of all the orders that get entered. We do specifically include in the order granting the monetary compensation the exact language from this offset provision and it specifically includes language that, if they get a future award, they are obligated to do the payback and to notify the state. Yes, the actual claimant gets the language that they have to do that.

Assemblyman Wheeler:

How many people or cases are we looking at over the past ten years? What is the volume?

Assemblyman Yeager:

There is an exhibit on the Nevada Electronic Legislative Information System, which is a memorandum from the Attorney General's Office that runs down the cases which have been filed [[Exhibit D](#)]. Some have been resolved and some have not. I want to note the original bill that we passed has a provision which basically says, If at the time the bill was passed, there was an existing person with a wrongful conviction claim, they only have until September 30, 2021, to file the claim. We are going to know by September what the potential liability is for the state for the potentially existing claimants. Of course, if someone has a wrongful conviction after the date of the bill, that would be a future liability, but as of yet it is unknown.

Ms. Proctor, would you give a quick rundown on how many cases have settled, what the monetary amount was, how many are active, how many you think might be out there that would come before the September 30, 2021, deadline?

Heather Proctor:

In the memorandum [[Exhibit D](#)], we have had seven cases filed to date. Four are settled or in the process of settlement. Mr. DeMarlo Berry received \$2.25 million for the wrongful incarceration itself. Mr. Reginald Mason received \$975,000 for almost 14 years of wrongful incarceration. Ms. Cathy Woods received \$2.85 million, which was for more than 30 years of wrongful incarceration. Mr. Frederick Steese's documents are currently pending in the state court for settlement. For his 18 years, we have recommended a settlement of \$1.35 million. We have three other cases currently pending: Mr. Dealba, Mr. LaPena, and Ms. Lobato. The potential for those are a total of \$3.19 million just for the portion of time they were wrongfully convicted. All those costs do not include other benefits to which they may be entitled.

I would also add that when Assembly Bill 267 of the 80th Session was first discussed, the total number of potential recipients at that time was 13. Of that, five of our seven individuals were on that list, and we have identified a potential addition of two individuals. As Chairman Yeager stated, they have until September 30, 2021, to file those claims, and that goes for everyone who could potentially claim a wrongful conviction prior to October 2019. We have not received any claimants since then that were not contemplated in that prior list or who were not wrongfully convicted several years prior to the enactment of this statute.

Assemblyman Wheeler:

So we are not talking about huge numbers of wrongful convictions. I do not think anyone wants to not compensate someone when we did them wrong. It should be. We basically ruined their lives. You are talking 10 or 12 people and that is backdated to all times. We are not looking at this happening weekly.

Assemblyman Yeager:

I sure hope not. I think that with some of the policies we have passed on this Committee we are trying very hard to make the criminal justice system more accurate and better so we do not have these outcomes. This bill came as a result of a few very egregious cases. I think

anyone would look at those cases and just know that a big injustice happened. It came from a desire to compensate them. I would be the happiest person in the world if we never had another claimant bring a suit under this bill, and we will keep trying to make sure that our criminal justice system has the appropriate safeguards. To answer your question, I do not anticipate that we are going to see a huge number of these. I think the big ones we know about are already in the system being processed, and hopefully we do not have any in the future.

Assemblyman Wheeler:

I was not worried about the money. I am worried about how many bad cases we have out there and what we can do to fix it. That is the true background.

Assemblyman O'Neill:

Not being an attorney, please help me understand. Section 3 delineated in 2019 exact amounts for x number of years of incarceration. If you go to section 3, subsection 2, paragraph (b), subparagraph (4), it says "counseling services" and it does not have an amount. Housing is \$15,000 a year. Paragraph (d) does not give an amount for financial literacy. I am confused. One part has a set amount, and then we are also going to provide an open check for counseling, an additional \$15,000 a year for ten years for their housing after release, and an open check for the financial literacy. I am not against the program. I am concerned about the open check status. To me, the award should include housing. It is ambiguous, if awarded. I am trying to figure out what would be the argument between not awarding and awarding.

Assemblyman Yeager:

In the conceptual amendment [[Exhibit C](#)], section 3, subsection 6, indicates all the damages that are compiled in that provision are the supplemental damages beyond the years. They are limited to no more than \$100,000 per calendar year. There is a cap on the calendar-year basis. They are also limited to the length of time wrongly incarcerated or on parole. For instance, if you got compensated for five years, your damages under the other section are going to be limited to five years and to a maximum of \$100,000 a year. The reason we did that is exactly what you are saying. It was really hard for the Board of Examiners to try to budget with basically lifelong unlimited potential awards, but now they have a maximum so they can at least have that in reserve, realizing the maximum might not be reached.

In terms of the court awarding specific items or not, I would ask either Ms. Proctor or Ms. Serreze to explain how the court makes that determination of what of these benefits to award and the process for reimbursement.

Heather Proctor:

What we have done with all the benefits that are listed in subsection 2 of section 3 of the amendment is to work with counsel for the claimant to determine which benefits, if any, they would like to receive. Because the language of the bill is fairly open, it is essentially up to the claimant which of these they would like to pursue. Thus far, we have only had one individual actually seek housing assistance. Most of them have sought counseling. Most

have sought some sort of medical insurance, and most have sought potentially higher education. It is almost a checkbox as to which of these expenses the individual would like to request, and we work with them and incorporate that into the orders we submit for the settlement to the court. By putting in section 3, subsection 6, we hope to put a cap on the total amount rather than no caps at all, which is what exists now.

Assemblywoman Krasner:

Section 4, subsection 3, of the bill states,

A person who received compensation from this State in his or her action brought pursuant to NRS 41.900, whether through an award of damages or a settlement, and who subsequently receives a civil settlement or award relating to his or her wrongful conviction shall reimburse this State for the compensation previously received, not to exceed the amount of the monetary compensation which the person receives in the subsequent civil action.

Currently, the law allows a person to file both a criminal and then a civil action both and keep the benefits of both. Is that correct?

Assemblyman Yeager:

That is not correct. They are both civil suits; it is not a criminal suit. There would be a civil suit against the state, and there would be a civil suit presumably against a local government agency under the federal code [42 U.S. Code § 1983]. Both of those are civil. The current law requires reimbursement. There is not a double recovery option.

The section you are referring to cleans up some of that language. For instance, it says "settlement." If the 1983 action settles rather than goes to trial, then we are clarifying that you have to reimburse based on a settlement. There was never an opportunity for someone to recover twice due to our fiscal responsibility. We wanted to make sure the state was compensated for a later award for the same conduct.

Assemblywoman Krasner:

I apologize. I meant in other matters. For example, we could take the matter of a famous former football player who was brought in an action in a criminal lawsuit and subsequently a civil lawsuit. [Unintelligible.] People are allowed in other matters to file both a criminal and a civil action and have received the benefits whether the person is incarcerated or they receive money in both. Second, why would a person go through the hassle of filing a civil suit after they have already received the money from the state the way that they are going to have to pay it back? And third, could this be considered intentional tortious interference with a private defense attorney in order to earn a living?

Assemblyman Yeager:

Maybe it is not the best comparison, but here we are talking about someone who is wrongfully incarcerated; certainly, someone could be charged criminally and held liable and then the victim of that crime could sue that person civilly. That happens all the time. It is

just that the criminal prosecution is brought on behalf of a state or a government agency, and the civil action would be brought by the victim. You are right about that, but this is the flipside of it. This is the person getting out and they cannot file a criminal action, for instance, against the state. It is only a civil action.

Why would someone file a subsequent suit? The truth is, sometimes—not all the time—these cases are very egregious and the civil rights violations from the local government entities are just shocking to the conscience. Those cases are going to be worth more than what the state is providing in this bill. With some of these cases, you would be talking multimillions if not tens of millions of dollars. They might want to bring a second suit because they think they are going to recover significantly more money and then, even after reimbursing the state, they are going to come out way ahead. That would be the reason why someone might file a second suit. They will talk with counsel about that and come up with what the appropriate strategy is.

Your third question was about tortious interference. I am not sure if you are talking about the attorneys' fees provision, but I do not think that anything in this bill would amount to essentially a civil tort relating to attorneys. I do not think the Legislative Counsel Bureau would have drafted it that way. We can certainly talk more about that offline, but I do not think there is anything in the bill that would allow it.

Assemblywoman Krasner:

Thank you very much for your answers. I remember this from the last session. I remember the testimony of Mr. DeMarlo Berry. I think it brought most of the Committee members to tears. I just do not like to see where someone who was wrongfully convicted through no fault of their own and imprisoned then get nickel and dimed by the state.

Assemblyman Yeager:

I would not characterize it that way at all. I think we have heard of the ones that have been settled and we are talking multimillion-dollar settlements. Again, the state did nothing wrong in these cases. The state is probably not legally responsible for the compensation, but I think, as you referenced last session, the testimony was so compelling that we felt obligated for the state to step in and help out. Hopefully, those people can hold the actual folks who should be accountable, accountable, and then the state would be made whole. I do not want to give the impression that it is nickel and diming. I do not think it is. I think that recovery is crucial for them to get their life back together and probably holding the actual entity that should be responsible, responsible.

Assemblyman Miller:

In follow-up to what you just mentioned about the state not being legally responsible for these convictions, if I understand correctly, most of this is happening at the county level. How do they participate in the sharing of the cost of these awards?

Assemblyman Yeager:

That is a great question and is one that we debated at length last session, and perhaps we are still debating. Right now, there is no direct provision in this bill or in this area of the NRS that would require any sort of sharing of the burden by the local government, whether it be a police department or a prosecutor's office. However, much like I answered in the last question, it is not atypical in these cases for the individual to file an action against those entities. If through the settlement of that case or if they go in front of a jury and the jury decides the local government did engage in wrongdoing, then that local government is going to have to pay the claimant, and under this statute, the claimant would have to pay the State of Nevada back. We put that in there to make sure that we are protected.

To make sure the record is clear, I do not want to suggest that in every case there was some kind of intentional wrongdoing. We are human beings and we all know our criminal justice system has been woefully inadequate in the past decades of protecting people in the way that it should. However, if a jury decides that there was intentional wrongdoing, you are going to have a huge amount of damages, and the state will be able to recoup in that way.

I do not want to get too far down this rabbit hole, but some of those discussions are ongoing—whether local government entities should be able to participate in these lawsuits in some fashion, and if so, how. If they do, is there a cost sharing or some kind of method to determine fault? I think we are far away from figuring that out because it substantially complicates these claims. We do not want them to be like the 1983 claims where they take five years. The whole point of this was for it to be quick and, credit to the Attorney General's Office, this law has only been on the books for a year and a half and they have done tremendous work in getting these cases processed and getting compensation.

Assemblywoman Hardy:

I am curious about the different amounts of \$50,000 or \$75,000 in section 3, subsection 1, paragraph (a). How are those figures determined? Is that an average of income?

Assemblyman Yeager:

There were a lot of people who helped on this bill, and one of them who helped was a young lady named Kaitlyn Herndon, who was interning for one of the Nevada Supreme Court justices. She did a 50-state survey and she did not have data on all 50 states because not all 50 states have it like this, but I want to say about 30 did. They were all over the map in terms of how they approached it and what the amounts were. Some gave a lump sum. Some gave an amount per year. We put our heads together and said, What would be right for Nevada and what is a number that we can settle on? It was important to me that Nevada statute be among the best in the country because we are often criticized for not doing things well and I wanted us to be a model. We settled on these numbers and doing the best we can and looking at what was out there. I am proud to say that I think the states that remain to pass legislation like this have been looking at Nevada's legislation as a model that is seen as the best in the country in terms of how we structured it. Not a scientific answer, but we said, We think you should get more money if you are incarcerated for more years, and we came up with something that I think was not going to bankrupt the state, which was a concern as well.

Vice Chairwoman Nguyen:

Thank you for your presentation on A.B. 104. Having sat through the presentation and being able to pass that legislation was one of the most memorable things we did last session, at least in my opinion.

At this time, we will start testimony in support of A.B. 104. [There was none.] Is there anyone who would like to testify in opposition?

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

I would like to thank Chairman Yeager and the members of the Attorney General's Office for speaking with us. We are in opposition today per the rules of the Committee because we believe the bill leaves out an important section of when a person is incarcerated. As the bill is drafted currently, it says that you would receive compensation only after the time you were wrongfully convicted. However, there is time that you spend in jail waiting for your case to go to trial, and those are years of your life that you lose as well. We would like to see an amendment in the bill that accounts for those years if the person can prove that they have spent the years in pretrial detention and incarcerated in a county jail waiting for trial, not being held on another case. You would not get compensation if you were going to be held anyway on another case, but on the particular case that you are wrongfully convicted for. That is where our opposition lies. Otherwise, we absolutely supported Assembly Bill 267 of the 80th Session and we are grateful for all the work Chairman Yeager and the Attorney General's Office has done taking on this issue.

Jim Hoffman, representing Nevada Attorneys for Criminal Justice:

We would echo what Mr. Piro just said. We are currently in opposition to this bill, but we are hopeful that we can get this language fixed and move into support.

Tonja Brown, Private Citizen, Carson City, Nevada:

We are in opposition of this bill. I have provided you with a proposed amendment to this bill that we support [[Exhibit E](#)]. We would like to see section 3, subsection 1, subsection 2, and subsection 3, include additional subsections starting with subsection 1, paragraph (a), subparagraph (1), to remove the word "imprisoned" and replace it with "arrested."

So it would be, "from the date the person was arrested after his or her wrongful conviction until the date the wrongful conviction was reversed or the person was released from prison, whichever is earlier." I have included in section 1,

- (2) with the exception of those who have become deceased while his or her appeal was pending and the court prior to receiving a death notification had deemed him or her factually innocent, or
- (3) the Nevada State Pardons Board Commissioners has deemed he or she Factually Innocent Posthumously, or
- (4) calculation for compensation for the Factual Innocent Posthumously will begin from the time of his or her arrest up and too, including, the time that he

or she would have appeared before the Parole Board per he or she's sentencing eligibility for parole to the streets, or
(5) if the person was given sentence of Life without the possibility of parole and died prior to the 21 or more years calculation of the bill, the estate will receive the maximum allowed awarded by the state of \$100,000.00 for each year.

I have included that to go into sections 2 and 3 as well. Thank you.

Annemarie Grant, Quincy, Massachusetts:

I am opposed to the bill. The wrongfully convicted have already suffered the ultimate injustice. The stigma attached to the conviction will plague them long after exoneration and the nightmare begins Day One, at the false arrest. That compensation should begin then as well, not at the time of conviction. Look at how long people are waiting for trial now due to COVID-19. One day in jail wrongfully convicted is wrong, let alone years. I would support Tonja Brown's amendment that she just mentioned. I understand the state needs to financially protect itself; however, we should start at the forefront of where these wrongful convictions begin, and that is by prosecuting the district attorneys who willfully have withheld exculpatory evidence to cause this wrongful conviction. Not in all cases, but in some, that is the situation.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:

I want to thank Chairman Yeager for his hard work on A.B. 267 of the 80th Session as well as his work on this bill with the Attorney General's Office. We appreciate all that the Attorney General's Office, Assemblyman Yeager, and the members of this Committee have done to assist those who have been wrongfully convicted to ensure that they are able to have the means to have a successful life ahead of them. Our only suggestion regarding this bill is regarding the term "imprisonment." I would echo the statements from the Clark County Public Defender's Office, and that our hope is to ensure that we are able to provide a calculation that is fair and clarified in order to ensure that it makes it easier for everyone to understand what compensation could be due.

I appreciate that the Attorney General's Office and Assemblyman Yeager have been so open and willing to discuss this bill with us and hope to continue this conversation.

Vice Chairwoman Nguyen:

Is there anyone who wishes to give neutral testimony? [There was no one.]

Assemblyman Yeager:

I would like to thank the Attorney General's Office. They have been a great partner throughout this process and, honestly, they have done most of the work. I hope the optics do not look bad that I had five or six people in opposition and no one in support. I think the opposition comes from a good place, and that place is because injustices have been done and we ought to compensate people for it. I agree with that 100 percent.

Let me tell you why I am not quite there on that proposal. We did not compensate anyone until we passed the bill last session. This is a new statute and we are certainly better than we were before. The request is really to compensate people for preconviction incarceration. As many of you know, right or wrong, people are incarcerated all the time before they get to trial. Right now, if you are incarcerated before you get to trial and you go to trial and the jury acquits you, the state does not compensate you for that time. Maybe the state should, but right now, we do not. I think that adding that provision would be somewhat inconsistent with how our criminal justice system works.

In addition, we have talked about how it is not really the state who is legally responsible for these damages. I think that as all of us being fiscal stewards of the state's money, we have to try to narrowly craft something that balances the interests at play. I think we have done that here.

Finally, keep in mind that in many of these cases, they are going to file a federal 1983 action in the most egregious cases. In a sense, they are going to get compensated for that pretrial incarceration if they are successful in that subsequent litigation. If they do not file that litigation, it is the state who has to pay. I think we have struck the correct balance. I am not immune to their concerns and their cries to do more. I often wish the state was in a position to do more, but I think we struck that appropriate balance. I am going to continue working on some of these issues to make sure we have this bill just as perfect as it can possibly be before we get to a work session. Thank you for your time and questions this morning in allowing me to present A.B. 104.

Vice Chairwoman Nguyen:

I will close the hearing on A.B. 104 and open the hearing on Assembly Bill 107.

Assembly Bill 107: Revises the procedure for determining whether a person may prosecute or defend a civil action without paying costs. (BDR 2-564)

Assemblyman Steve Yeager, Assembly District No. 9:

I would like to thank Ms. Bortolin, who really helped me on this bill. She did most of the work and talked to most of the interested parties, and it is a pleasure to be able to bring the bill. This bill is about access to justice. Access to justice is obviously important, and the inability to afford court filing costs should not serve as an impediment to having your day in court. Assembly Bill 107 is a bill that will improve access to justice because it gives the court more guidance on how to determine whether a person should be relieved from having to pay costs to get into court. I provided a conceptual amendment [[Exhibit F](#)], and I would like to hand it over to Ms. Bortolin, who will take you through the bill as well as the amendment.

Bailey Bortolin, representing Legal Aid Center of Southern Nevada; Washoe Legal Services; Southern Nevada Senior Law Program; and Volunteer Attorneys of Rural Nevada:

We provide free legal services to people who cannot financially afford attorneys for the legal help they need. This bill is about the fee waivers that are required to allow people who cannot afford to file those actions with the court to proceed so that there is not a financial impediment to their ability to access justice. The courts have been a great ally and partner in our mission for access to justice and in promoting that throughout our legal system.

I want to read you the Access to Justice Commission mission statement for the state of Nevada.

Access to Justice/Equal justice under law is not merely a caption on the façade of the United States Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists. It is fundamental that justice should be the same, in substance and availability, without regard to economic status.

Our fee waiver system allows thousands of people every year to proceed, but it is not specific in who that should apply to. We found inconsistent results across the state. The courts have been left with that policy decision of who should we find to be an indigent person and who should we not, and what qualifies them. We think it is appropriate as a policy decision for this Committee to put in the definitions of who that should really apply to.

I want to note that it is particularly important right now with everything going on. We have more legal need than ever and this applies to all civil filings, whether you need to change your name, you need to get a divorce, or you have a child custody issue. The big one for me that you continue to hear about is the opportunity to defend yourself from an eviction notice, where you have to affirmatively file an answer with the courts. If you do not file that answer, your case can be summarily granted without ever receiving a hearing under Nevada law. That costs \$71 in Clark County and about \$70 throughout the state. That is a real impediment if the reason you are there is because you did not have enough money to pay your rent in the first place. As we move forward in this evictions crisis and as we see those turn evictions back on, we want to make sure that we have clearly defined and allowed. I will say in some cases, this is slightly expanding access to those who do not have that financial barrier for an opportunity to defend themselves from losing their homes in a pandemic.

There are two examples I would like to provide you. One is from the fall of 2020. Seventy eviction protections were lifted and we saw those actions start to process en masse. We had an elderly gentleman who came into the court with a walker by himself. He and his wife were in their 70s and he did not want her to come to the court with him because he thought it was putting her at risk of COVID-19, so he was trying to navigate this by himself. She had lost her job that had helped supplement their fixed income that they used to pay their rent, and they had received an eviction notice. They were denied for being a couple of dollars

over what they had set as a monthly limit, but again, they clearly did not have that monthly income. As he was trying to figure out what to do next and panicking in that moment, he fell from his walker and left the courthouse in an ambulance. We call those moments our "legal emergency rooms" when we are helping people figure out how to file, because there are quick time lines and people need that help right then and there. I think that is a good example of the need that we are going forward.

The other example in a family court context when a single mother of four applied for a divorce from her abusive husband. She earned \$1,800 a month, but because of the four children that she was attempting to take care of by herself, her expenses were \$2,500 a month. Her fee waiver was denied and she ended up waiting a few months until she could save up the \$299 that it costs to file for a divorce. We think that these expansions that I am going to walk you through will cover those situations. They are an outlier. Most people are qualifying, but we think it is important to close the loop and make sure those people are able to access justice.

If you will look at the bill, the real substance of it is in section 1, subsection 2. Paragraphs (a) through (f) are listed there, which are what we are putting in as the parameters for who qualifies for those fee waivers. The first one is an existing qualifier: if you are a client of legal aid, you can have your fees waived because we believe that the legal aid providers are doing that financial assessment before they have you become a legal aid client. You have already proven that you have a financial need, so we do not want to reinvent the wheel. The rest of the categories are new. We did do a 50-state survey to look at what is common and what other states are doing to allow access to justice. Paragraph (b) has the same idea as (a) if you are receiving public assistance. We believe that you have already proven you have a financial need and we do not need to require further burdens to get there. Paragraph (c) is household income. We put 150 percent of the federal poverty line and we provided you an exhibit to show what that means [[Exhibit G](#)]. Those numbers are based on how many people are in your household. This is where we will have a slight expansion in some courthouses because every courthouse sets their own limit.

As an example, where the bulk of the work is in Nevada, the Las Vegas Justice Court had set it at 138 percent. We are seeing a slight increase as 150 percent is what legal aid uses to determine qualifications for clients, so it would put some consistency in with the legal services that indigent people have access to. Paragraph (d) is a safeguard. If you have a Lamborghini in a garage somewhere, you should not have access. We want to make sure that you cannot just say, I do not have this money in my bank account, when you really do have the means to pay the filing fee. Paragraphs (e) and (f) are to allow for a reasonable and human review of the unique facts of each situation. If a mom has medical bills for children that are having an outside impact on her monthly income, that is something we should take into consideration on a case-by-case basis.

There are a few friendly amendments [[Exhibit F](#)] that are a result of the conversation with the Judiciary. They have given me permission to represent that there are no remaining concerns and so they are comfortable with this bill moving forward.

Some of those language changes that you see are to allow for further automation and streamlining of legal services. Something we have been working really hard on during the pandemic is to allow people to file online from home so they do not need to physically have to come in. As we are able to continue to build off of that, if there are ways to streamline this and allow this to proceed perhaps a little less formally so that we can do some of that automating and streamlining so people do not have to wait as long and it is not as much of a burden on court resources, we support that progress. We are having a lot of conversations about the great work that we have made to automate and make access to the courts easier because of the pandemic. We think the next frontier is trying to meet people in the community where they are at with their legal needs.

Before the pandemic, a lot of people had to take the day off work, take two buses, get down to the courthouse, and figure out how to file. If we can bring the legal assistance to them where they are, in their communities, and help them figure out how to do it without all of that burden, that is something we want to continue to build on from this moment. That has been a silver lining to what is going on in the judicial system.

Stephanie McDonald, Directing Attorney, Family Law Self-Help Center, Legal Aid Center of Southern Nevada:

I am the directing attorney for the Family Law Self-Help Center in Clark County, Nevada, in the Eighth Judicial District Court. This is a statewide issue and affects all jurisdictions across the state. In my position, I see the multitude of family members who are filing various kinds of family law cases in Clark County, which is our busiest district court in the state. Our center assists those who are unable to afford an attorney. While legal aid services do a great job of representing those without means, the demand for legal services far exceeds the ability of legal services to assist all those individuals. We are there to provide guidance, information, forms, instructions, and explanations of the process to all of those who are now beginning the system on their own.

We are very grateful to have this consideration because there is a bit of a lack of uniformity in how those applications are processed. It is left to judicial discretion as to who qualifies and who does not. An application before one court could be approved. The same application before a different court could be denied simply because there are varying measures of how the standards get applied. We are excited about the possibility of having this legislation to provide more uniformity for all those throughout the state.

Assemblywoman Hansen:

I agree that access to justice should not be deterred because a person cannot afford it. Currently, what happens when the decision is made that the person does not qualify? If you are working with them, what recourse is there?

Bailey Bortolin:

The filing is not accepted until you are able to pay, so that is a real impediment to access to justice.

Stephanie McDonald:

It varies. There are some courts where the fee waiver is denied. It then becomes a matter for the clerk of court to continue sending invoices daily to a litigant asking them to pay that fee. Some cases get dismissed by the court. There are some courts that are putting time limits on the amount of time a person has to pay. Oftentimes that might be 30 days from the date of the denial to pay the filing fee or their case is dismissed. When a case is filed, someone normally has 120 days to get the defendant served to move on in the process. The 30-day window of denial is resulting in cases being dismissed prior to their normal 120 days to prosecute a case. The results of a denial are all over the place and there is no recourse for someone who has been denied the statute previously. In its proposed form now, it does not provide an appeal or any kind of review for a denial of the fee waiver, so it ultimately becomes up to the individual court how to process that. Some continue on, waiting for the clerk to collect, and some get dismissed. It is kind of a mixed bag right now.

Bailey Bortolin:

In the eviction context that I was mentioning earlier, typically if you are late on rent you have a seven-day nonpayment of rent notice, which is an extension that was put in last session, and the seven days that you have to respond before the case can be granted continues to toll pending a decision on your fee waiver and if denied. In that situation, you have a very limited amount of time to find the money to file an answer.

Assemblywoman Hansen:

If this bill were to pass and go into law, then will the burden of the financial side of it be borne by the counties, city, or state? I am trying to understand the structure—not so much how much money, but where the fiscal responsibility is going to lie.

Bailey Bortolin:

The courts did not feel this was a drastic change in policy for any of them, so we did not get any feedback on how this would impact their budget. They did very politely point out to me that most of the fees in these filings actually go to the legal aid providers in the state. We are proposing to take a hit in our own budgets because we think it is important for the clients that we serve.

Assemblywoman Hansen:

Thank you so much. I am sorry; I have to get off Zoom. I have a funeral to attend, but I am glad I got to hear the majority of the bills today.

Assemblywoman Cohen:

I have a question about the existing language that we are not trying to change. It struck me as odd. In section 1, subsection 5, there is "prevailing party" language. I was not even aware of that and I am not sure if that is complied with by the courts. Is that something you saw in your practice with legal aid? If I am wrong, does it get complied with?

Bailey Bortolin:

I should have mentioned section 1, subsection 5, in my answer to Assemblywoman Hansen. There is a statutory provision that allows the courts—if the person who filed the fee waiver prevails in the action, which is not every case—to order the other party to pay that fee waiver which was previously waived. Should this cause a budget offset, you would be able to point to that as a way in some of these cases to recoup those costs. Like you, I personally do not see that used very often. A fee waiver is across all types of filing cases where it might be used more than others, but I will say that having focused on evictions for the past 11 months, we do not see that used in those cases at all. It is there, but we have not had conversations about amending it in the context of this bill.

Assemblyman O'Neill:

In the conceptual amendment to section 1, subsection 1 [\[Exhibit F\]](#), it says, "Such application shall include an unsworn declaration under the penalty of perjury" I thought to have penalty of perjury, the declaration had to be sworn.

Bailey Bortolin:

That is the check and balance currently in place. As you will see in the draft, we were using an affidavit, and the word "affidavit" throughout the bill is struck and replaced with the word "application" to try to move forward with a more informal process when possible if easier for all involved. There was a concern raised by the Judiciary that an application does not necessarily require that penalty of perjury, but the affidavit did, so we wanted to ensure that that check and balance stayed with the existing process, and it was amended back in.

Assemblyman O'Neill:

To get perjury, you have to be able to prove that the person falsified the information if they are not swearing to it. I did not know you could be prosecuted for perjury on an unsworn statement, whether it is called an application, declaration, or anything else.

Bailey Bortolin:

I am not sure if Ms. McDonald knows the ins and outs of that. I know that the unsworn declaration with the penalty of perjury was the existing practice and complies with the related court rules.

Assemblyman O'Neill:

If that is the accepted practice, I will accept it, I guess.

Stephanie McDonald:

The prior traditional practice within the courts was just about everything required an affidavit attached to it, which requires a notary, and all the bells and whistles of what legal documentation traditionally includes. *Nevada Revised Statutes* 53.045 has been in place for quite some time, which has largely replaced the use of those affidavits that required a notary. It is another mechanism of providing greater access to justice for people who do not have the ability, time, or means to get documents notarized. Pretty much all of the self-help legal documents right now that people are using employ that unsworn declaration in lieu of the

affidavit, and the language that actually gets attached to it is, "I declare under penalty of perjury that the foregoing is true and correct." That is the widely accepted practice within the courts that allows those legal documents to be filed, acknowledged, and accepted without the use of a notary.

Vice Chairwoman Nguyen:

I will concur with that. I know that in practice we almost always exclusively use declarations instead of affidavits.

Assemblywoman Hardy:

I worked in the civil division, so I have a lot of experience with the fee waivers and the frustration of people coming in under a time limit and not knowing how to fill the form out. We could not answer their questions. I appreciate clarifying this and having a new form.

I have a few questions about the form. The previous form was one page and they had to fill in the amounts. Is the new application more detailed? Is it yes and no questions? Do they have to put in amounts? Would you give us some information about the ease or details of the new application form?

Bailey Bortolin:

We work very hard on forms as the state judicial system. Forms are a big thing that we spend a lot of time revamping and reworking. We have fee waiver forms that we have developed. It is always a struggle to get those accepted as a statewide form because each court operates in a different manner. We spend some time trying to adapt those as necessary for each courthouse to accept. I do not foresee that our self-help forms would need to be drastically changed, but should this bill pass into law, we would take a look at how to amend them to be acceptable. We really like the proposed language in this bill that says, "on a form provided by the court," because it will help us with that form process in working with the courts to have an easy-to-use and easy-to-understand uniform process for anyone—regardless of whether or not they are a client of legal aid—to be able to navigate how to access the fee waiver.

Assemblywoman Hardy:

That is good to hear. Many times, these people would run upstairs at five minutes to four and were frantic. I think it is good, especially if they are going to be doing e-filings from home. The ease of the form would probably be very beneficial.

Assemblyman Orentlicher:

I want to make sure I understand section 1, subsection 2, paragraph (d), regarding the liquid assets provision. The example you gave made it sound like you were talking about someone who might qualify under some other provision, say a household income, but actually has ample assets they could draw on. It sounds like you were saying we would not want that person to qualify. If I am understanding that example, I am not sure paragraph (d) works that way. It is an "or." Was it your intent to not let that person qualify even if they qualified under another provision, or did you want it as an independent provision?

Bailey Bortolin:

I understand what you are saying. My example may have been a little rushed based on how we are currently handling these. In my experience, we are asking people if they have these liquid assets, but the way we are moving forward with these, if you are able to prove need under any of these, you would be able to move forward.

Stephanie McDonald:

I do not think that circumstance presents itself terribly often. Under the current version of the application, litigants are asked for their household income alongside a listing of whatever assets they have, which typically includes a house, car, or bank account. The court is looking at that as a whole. It is the very rare circumstance where someone would show income below the threshold amount but have assets in great amounts which would allow them to pay for the filing fee. Within the family court context, there are generally additional financial disclosures that get submitted, and should it come to the court's attention, maybe someone got through on a waiver that they should not have received, the court always has the power to revoke it later if appropriate.

Vice Chairwoman Nguyen:

Are there any other questions from the Committee? [There were none.] Is there testimony in support of A.B. 107?

Liz Davenport, Legislative Aide, American Civil Liberties Union of Nevada:

As the presenters explained so well, a guiding pillar to the courts and justice system is to provide "equal justice for poor and rich, weak and powerful alike." People have never ceased to hope and strive to move closer to that goal as stated by the U.S. Supreme Court in 1956. Assembly Bill 107 will allow Nevadans greater access to Nevada's courts and provide a consistent method to removing financial barriers in accessing the court system. A clear and objective standard to granting fee waivers is more important than ever right now. Poverty should never be punished by forcing unequal access to justice.

Existing law does not provide Nevada's courts with a clear and objective standard for granting fee waivers and does not provide an applicant with clear guidance. Assembly Bill 107 makes the positive changes in providing courts with a clear and consistent message and also provides applicants with clear guidelines for eligibility for a fee waiver. The ability to access the court system should be open to all. A court fee should not be a prohibitive factor. The American Civil Liberties Union supports equal access to justice and supports A.B. 107.

Vice Chairwoman Nguyen:

I know that that was Ms. Davenport's first time testifying on a bill in Committee and would be remiss if I did not point out that she is a University of Nevada, Las Vegas William S. Boyd School of Law graduate. I know that we see some of the same people testifying over and over again, so welcome to the Assembly Judiciary Committee.

Tonja Brown, Private Citizen, Carson City, Nevada:

The Advocates for the Inmates and the Innocent support this bill. I would like to make a comment dealing with the assets. There has been a time or two where dealing in the matter of an estate and the estate has no money and there is an administrator appointed. They are required to pay the filing fee. I think that is something that should be looked at. It should be waived. There may be variable assets in the estate or maybe future assets, such as a car accident and someone was killed but they had no assets at the time but will in the future. So they look at that and they will get hit with the filing fee. Other than that, we are strongly in support of this bill.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

We stand with our colleagues from legal aid in supporting this bill brought by Chairman Yeager. This is an access to justice issue and it does affect our clients in that filing fees can sometimes prevent them from moving forward with sealing their records. So this would open up the doors to more record sealing and helping our clients move forward in their lives.

Benjamin Challinor, Policy Director, Faith in Action Nevada:

Faith in Action Nevada is a statewide nonpartisan multifaith organization that organizes and advocates for racial, social, and economic justice, as well as an inclusive democracy. We are here in support of A.B. 107 with the proposed amendment. I would like to echo the previous speakers. Poverty should not prevent access to justice. Those who are already suffering should not be put through even more, especially when it comes to housing. Nevada already has an imbalance of power between tenants and landlords, and this is one step towards settling that, especially for those who are on fixed incomes and receiving public assistance.

In addition to eviction defense, this would also apply to security deposit disputes, which we have seen some landlords hold against their tenants. Many times, especially for people who could receive these fee waivers, it means whether or not they will be able to move into their next home due to their security deposit being held up. Assembly Bill 107 makes sure that we can actually help those who are in need in these civil procedures.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:

As the other callers have indicated, this is extremely vital to ensuring equal access to justice for all Nevadans. I would note that, as I mentioned in my presentation about the Washoe County Public Defender's Office, oftentimes our clients have collateral issues involving the legal system, which with this bill would allow them to ensure that they are also able to take care of those matters that may have brought them into the criminal realm, but also to ensure that they are able to become productive members of our society. We appreciate this as well. Having volunteered with a lawyer in the library and having processed fee waivers as a law clerk, I can say that the example Ms. Bortolin provided were not just crazy exceptions, but those are occurrences that do occur very frequently. We appreciate this bill.

Tess Opferman, representing Nevada Women's Lobby:

One of our top priorities of the Nevada Women's Lobby is housing security, especially now through the current pandemic. We want to ensure women and families are able to maintain affordable and stable housing, which has been made even more difficult by the high rates of unemployment, something that has disproportionately affected women. We support this bill as it removes a financial barrier to access to justice and ultimately can provide housing security.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:

I support the bill as it specifies what satisfies the inability to pay. Far too often people are denied aid or access to justice due to financial poverty, especially when pro se litigants are treated at the same standard as an attorney when it comes to filings, et cetera, though the law says they should not be. I am in support of this bill because it gives access to all.

Vice Chairwoman Nguyen:

Is there anyone who wishes to give opposition testimony?

Steven Cohen, Private Citizen, Las Vegas, Nevada:

I have a couple of concerns as a current pro se litigant that is having to navigate, particularly, the federal pro se system. First, this seems to be devoid of a screening requirement. Filing is the first step, but then the court is charged—at least in federal court—with ensuring that the claim is viable on its face initially. The second issue—I am going to sound like a broken record as I testified at length on this in the Senate yesterday—how do we reconcile access to justice with statutes of limitations? Picking up where the presenter left off with her example, especially now, it is conceivable that someone could never have those disposable assets, for want of a better phrase, to actually pay the fees. The third issue is that I would like to see for complex litigation as mine—because the problem I am having is because of who the defendant is—is finding a lawyer who does not have a conflict of interest. I would like to see some better reconciliation with the referral information system through the state bar. I stand ready, willing, and able to work with the sponsor, the Committee, and presenters to facilitate those changes.

Vice Chairwoman Nguyen:

Is there anyone who wishes to give neutral testimony? [There was no one.] Assemblyman Yeager, do you have any closing remarks on this?

Assemblyman Yeager:

I want to thank Ms. Bortolin and Ms. McDonald for being here and helping me to present the bill. I do not want to lose an opportunity to thank the people who do the really hard work of working for legal aid organizations. Attorneys are expensive and they are not always willing to take on cases. We have such a need in this state and our legal aid providers step in as best as they can to fulfill that need to help real people with real problems every day of the year and helping them solve those problems. I want to thank them for the work that they have chosen to do. I do not think we thank them enough. It is really hard work and sometimes not very rewarding.

Bailey Bortolin:

I would like to similarly thank Assemblyman Yeager for agreeing to work on this legislation with us. I appreciate the time and opportunity we have had to discuss and work through this, and the Judiciary for working with us and always being a great partner in the pursuit of access to justice. I look forward to getting this legislation through, and if anyone has concerns or questions that come up after the fact, please feel free to reach out to me. Thank you for all the policy work that you are doing. I appreciate the time and effort you put into this.

Vice Chairwoman Nguyen:

I will close the hearing on A.B. 107. I will invite Assemblyman Yeager to take over the rest of the meeting.

[Assemblyman Yeager reassumed the Chair.]

Chairman Yeager:

Is there anyone who would like to give public comment this morning?

Annemarie Grant, Private Citizen, Quincy, Massachusetts:

Thomas Purdy was murdered by Reno police and Washoe County deputies during a mental health crisis. Today I want to tell you about Micah Abbey, who was killed by Reno police. Micah Abbey was 33 years old when he lost his life to Reno police on December 25, 2011. He was in a group home for mentally disabled folks. He got into a verbal argument at dinnertime with one of his peers. Staff called the Reno Police Department. By the time Reno police officers, Keith Pleich, Daniel Bond, Scott Rasmussen, and Brad Demitropoulos arrived, Micah was resting peacefully and calmly in his bedroom by himself sitting on his bed. Micah did attempt to resist arrest on Christmas Day. Of course, he did not want to go to jail. The police tased him 22 times, of which 12 of those he was handcuffed and face down with officers on his head, neck, and back. They also hog-tied Micah, like Reno police did to my brother, Thomas Purdy. They used a baton on him as well. He never made it out of his room alive.

I personally know Micah's family and so many other Washoe County families living the nightmare of police killing their loved one without consequence. Christmas is a dreaded day for Denise, Micah's mom. She worked in a mental hospital for years and they did not tell anybody. Truth be told, the only community member to die at a mental facility in Washoe County was Ronald Leach, who was a patient and shot by Reno police in the parking lot. Please do not support bills that further protect bad cops. Support bills that promote transparency and accountability from police.

Tonja Brown, Private Citizen, Carson City, Nevada:

Thank you for the hard work you have put into these bills. We truly appreciate it. I have provided the Committee with my proposed amendments to Assembly Bill 104 [[Exhibit E](#)] along with two exhibits. These exhibits are sworn affidavits under penalty of perjury. I do

not see them up on the Nevada Electronic Legislative Information System and I would like to see them there if possible.

In the proposed amendment, I stated under section 3, subsection 1(a)(2), with the exception of those who have become deceased while his appeal was pending and the court prior to receiving a death notification had deemed he or she factually innocent. Instead of "had" should be "would have." I touch on it because of the COVID-19 situation. We have inmates who are appealing their convictions, and some have for many years. Should they die because of COVID-19 or other health issues, they should not lose [unintelligible] trying to exonerate their names. Correct me if I am wrong, but it is also in part because of Mr. Fred Steese. I recall that Mr. Steese was tied up in court and the judge was about to render a decision when Mr. Steese was approached for a deal. He took it prior to the judge deeming him innocent. So that, in part, is why I have that in there. Once a person dies, within 30 days the courts are notified, and if it is even pending in federal court or state court, and that court was going to determine if they were innocent, it should belong in this bill.

Chairman Yeager:

Is there anyone else for public comment? [There was no one.] I will close public comment. Is there anything else from the Committee members? [There was nothing.]

The meeting is adjourned [at 10:04 a.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment to Assembly Bill 104, dated February 19, 2021, presented by Heather Proctor, Chief Deputy Attorney General, Office of the Attorney General, and submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit D](#) is a memorandum to Chairman Yeager, dated February 17, 2021, from Christine Jones Brady, Second Assistant Attorney General, Office of the Attorney General.

[Exhibit E](#) is a proposed amendment to Assembly Bill 104, submitted by Tonja Brown, Private Citizen, Carson City, Nevada.

[Exhibit F](#) is a proposed amendment to Assembly Bill 107, dated February 19, 2021, presented by Bailey Bortolin, representing Legal Aid Center of Southern Nevada; Washoe Legal Services; Southern Nevada Senior Law Program; and Volunteer Attorneys of Rural Nevada, and submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit G](#) is a chart titled "150% of Federal Poverty Guidelines," presented by Bailey Bortolin, representing Legal Aid Center of Southern Nevada; Washoe Legal Services; Southern Nevada Senior Law Program; and Volunteer Attorneys of Rural Nevada.