MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-First Session
March 9, 2021

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:03 a.m. on Tuesday, March 9, 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:

Assemblyman Edgar Flores, Assembly District No. 28

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:

Ana Olivares, Psy.D., Psychologist, Henderson, Nevada
Annemarie Grant, Private Citizen, Quincy, Massachusetts
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice
Tonja Brown, Private Citizen, Carson City, Nevada
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Brad Keating, Director, Government Relations Department, Clark County School District
Joseline Cuevas, representing Mi Familia Vota
Jim Sullivan, representing Culinary Workers Union Local 226
Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County
Michael Whelihan, Assistant Director, Department of Juvenile Justice Services, Clark County
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Elizabeth Florez, Interim Director, Department of Juvenile Services, Washoe County
Jo Lee Wickes, Chief Deputy District Attorney, Juvenile Division, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Liz Davenport, Legislative Aide, American Civil Liberties Union of Nevada
Melissa Saragosa, Justice of the Peace, Las Vegas Justice Court
Robert Segura, Private Citizen, Las Vegas, Nevada
Sophia Romero, Attorney, Legal Aid Center of Southern Nevada
Paul J. Enos, Chief Executive Officer, Nevada Trucking Association
Maggie O'Flaherty, representing Tow Operators of Northern Nevada

Chairman Yeager:
[Roll was taken. Committee protocol was explained.] Members, as you can see, we have two bills on the agenda today. We are going to take them in reverse order at the request of our first presenter. At this time, I will open the hearing on Assembly Bill 132.

Members, you should have received in an email sometime yesterday an amendment that is being proposed by the sponsor of the bill on A.B. 132. And members of the public, you will find that on the Nevada Electronic Legislative Information System (NELIS) as well, so please be sure to reference that when we are going through the bill. I think that will help

further the discussion. Now I want to welcome to the Assembly Judiciary Committee, I think for the first time this session, Assemblyman Flores, who is no stranger to this Committee. I believe he has another presenter with him, Dr. Olivares, as well. We will give you two a chance to present A.B. 132, and then I am sure we will have some questions.

Assembly Bill 132: Revises provisions governing juvenile justice. (BDR 5-783)

Assemblyman Edgar Flores, Assembly District No. 28:
I wanted to briefly offer a road map of how I intend to proceed with the conversation this morning, as I believe it will be helpful to follow along with the discourse. I also wanted to introduce my copresenter, Dr. Ana Olivares, who is a gem in this community and does amazing work. I think you will find that her copresenting will be incredibly helpful to further unravel why I believe this bill today is necessary.

The way I intend to proceed with the conversation is as follows. I would like to first walk you through, in a brief and detailed manner, how the landmark *Miranda v. Arizona* [384 U.S. 436 (1966)], a 1966 Supreme Court case, laid the foundation for procedure across the country, and particularly in the state of Nevada. We now have to read *Miranda* warnings prior to a custodial interrogation occurring. Afterwards, I would like to go into concerns I have with the *Miranda* warnings, particularly when it comes to our youth, that is individuals who are 17 years of age and under. Next, I would like to hand over the presentation to Dr. Ana Olivares, who will be able to provide insight into some of those concerns; how the science demonstrates that there should be concerns that we, as a state, should collectively try to address. I will then ask for the presentation to come back to me, and I will walk you through the conceptual amendment that I hope everybody now has a copy of. I will explain to you the genesis of the original language, why the conceptual amendment is here, and explain how I believe that conceptual amendment addresses those concerns. Lastly, I would like to preemptively address some of the opposition we will be having this morning. I will walk you through some of the concerns they will raise and how I believe this bill far exceeds those concerns. Then I will open it up for questions.

I will start with the landmark case of *Miranda v. Arizona*. This is a 1966 case. I am emphasizing 1966 because there is the ability for us as a society to forget how recent a lot of these things are. We have a tendency to believe that we have always had these constitutional protections, that they have been there since the very start of our democracy, and that our country has consistently enforced them. What more could we do? If I can offer a quick synopsis, *Miranda* is the case that now requires that before a custodial interrogation is to occur, the very famous phrases that you hear when you are watching a TV show or movie must be said. The very famous *Miranda* warnings of, You have the right to remain silent. Anything you do and say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford one, one will be afforded to you. We always hear these phrases and we take them for granted, but they are incredibly important because if you read the case of *Miranda v. Arizona*, if you want to geek out for a bit, you will be given the opportunity to understand what was happening. If you read that particular case, you will hear the case of an individual who, on multiple occasions, asked for an attorney to be present

during an interrogation and was denied the opportunity to do that. You will read about how, while he requested to not continue the interrogation, he was forced to stand, and it went on for hours upon hours.

The United States Supreme Court engaged in a very scholarly argument where stakeholders from both sides entertained the argument of, Are we protecting and providing every individual the constitutional protections afforded to them when we do not have a set of instructions and procedures that we are following nationwide? The ultimate consensus was no. Now there is a whole body of scholarship that explains how important this is. One of the key things in that Supreme Court case that often, in my opinion, gets overlooked because we focus so deeply on the "right to remain silent, the right to an attorney," is the actual language that they used. Specifically, I would like to quote and read directly from that. It says, "The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly, and intelligently." Those last three words are key because a *Miranda* warning means nothing if you do not understand that when you waive away your rights you are doing it voluntarily, and more importantly, knowingly, and intelligently.

This is where this bill comes into play. Assembly Bill 132 seeks to address the disparity and disproportional realities that exist between adults and minors. There is a whole body of science that is undisputed in scholarly journals and law review journals that discusses this particular matter. There is now science that talks about how brain development does not end magically at 18 years old or at 21. In fact, the science goes far into the late 20s. I mention that, because then it begs a question that we as a society have to answer. And that is, is a child, 17 or under, voluntarily, knowingly, and intelligently waiving those protected constitutional rights that we so fondly hold true to this country? It is my response that the answer is no. I have always anecdotally said that when we talk about the Olympics of who is the most disproportionate when it comes to access to the courts in this country—and I have engaged in conversations that it can be disproportionately impacted communities, like our Black community, our immigrant community, our LGBTQ community—but I have always consistently argued that it is minors.

Kids are born in a systemic structure where you have to listen to adults, where you do not recognize that you have constitutional protections that are afforded to you. You listen to your parents; you listen to your teachers; you listen to authority. It is very seldom that a child ever genuinely recognizes the power of saying no, the power of recognizing that they can remain silent and that they have the right to an attorney. These things are foreign concepts to them. That is where this bill is so instrumental. If I could walk you through a set of examples, I think that will help explain why I think this bill is so important.

When we think of our youth, here are things that a 17-year-old or under cannot do or is limited in doing: entering into a binding contract; buying or selling property including real estate and stock; getting married without parental consent depending on their age; suing or being sued under their own name; compromising, settling, or arbitrating a claim; making or invoking a will; inheriting property; voting in a national, state, or local election; consenting to all forms of medical treatment; joining the military; purchasing or consuming alcohol;

gambling; purchasing and consuming tobacco products; working; getting a driver's license; and even watching an R-rated film. I can go on listing a whole host of things that we limit our minors from doing, and yet somehow, we have a tremendous amount of pushback when we talk about ensuring that we are giving them their constitutional rights.

It is so incredibly important that I make this point. I think that we as a society have the desire and consensus to limit, in so many ways, what a child can do because we want to protect minors. We do not do it because we are trying to help adults. I believe that when we implement all these parameters and protections in layers of what minors can and cannot do, it is because, as a society, we agree that we have a responsibility and obligation to protect them. Because we realize that a child is not there at the same maturity level. So, I want to make sure, through this bill, that we take into account those realities. In fact, I have provided as an exhibit [Exhibit C], a slideshow from King County, Washington, that talks about why there is a lack of understanding and why the law is different for adults and children. I implore you to look at it briefly later because it can help put it into perspective, especially for those of us who may be visual learners and like to see things. I think that slideshow does a good job of that.

In the last twenty-five years, and you will see those cases highlighted in that slideshow, there is a body of Supreme Court cases that specifically delineates and captures this whole societal understanding that minors are inherently different from adults, that minors grasp things differently, that minors are incapable of understanding that a decision today may have long-lasting impacts on their life, that there is a consensus in the science that a child's mind is not the same as an adult's. I will further delineate that by handing the presentation over briefly to my copresenter, Dr. Olivares. After she does her presentation, I will bring it back and talk about how I believe this bill addresses concerns that Dr. Olivares and I presently put on the table.

Before I do that, I just want you to get a perspective because Dr. Olivares is not one to highlight her résumé. Dr. Olivares is a licensed clinical psychologist in the state of Nevada. She earned a master's degree in child and adolescent psychology and a doctoral degree in clinical psychology. She is trained in the evaluation and treatment of mental disorders. Dr. Olivares' training history includes personality and intelligence testing, psychotherapy, and diagnostic evaluations. She has trained and worked in various settings throughout Las Vegas, including inpatient psychiatric facilities, outpatient clinics, and most recently in her own private practice. Dr. Olivares served as the Southern Board Secretary of the Nevada Psychological Association and as an adjunct faculty for the graduate medical education residency program at Southern Hills Hospital and Medical Center. I will now hand over the presentation so we can get further into the science and brain development of a minor.

Ana Olivares, Psy.D., Psychologist, Henderson, Nevada:
I am here to talk about brain development in adolescents. I will use adolescents and young people interchangeably. I will also talk about the impact of stress on judgment and decision-making. I would like to talk about what this looks like for young people in particular. We are focusing on the dynamics of a high-stress situation combined with the underdeveloped

brain. Generally speaking, being able to cope with stressful situations is an important part of healthy brain development. The larger evidence does support that our brains continue to develop throughout adolescence, and for most of us, well into our mid-twenties. That being said, a young person's decision-making and judgment could be especially impacted during an intense situation, such as an interrogation or an interview setting, especially without a parent present. Being able to make sound decisions during high-stress situations is in and of itself beneficial to us, because stress is a part of life, so having that skill is essential.

This process does happen very differently for an adolescent brain, and it comes down to more than just an adolescent lacking experience or intelligence. This is in part why we commonly see adolescents engaged in behaviors that are impulsive or dangerous at times. The way they think, solve problems, interpret social cues, and make decisions is very different than the way adults do. It does not mean that they are unable to make sound or good decisions, to know right from wrong, or to understand consequences. But they are more guided by the reactive and emotional part of the brain, rather than the more logical frontal part of the brain, which controls goal-directed behaviors, active behaviors, problem solving, and impulse control. That is because our brain matures from back to front essentially. When we are adolescents, it is not fully developed and those connections that adults have are not yet formed for young people.

How we respond to stress and what happens to our judgment and decision-making abilities depends on factors such as our perception of stress in the moment; external conditions—our environment has a lot of influence on our judgment and decision-making; and access to people who play critical roles in our lives, such as a parent or other support person. Having access to someone who plays a supportive role acts as a buffer. It helps to mitigate those emotional reactions during intense situations. Generally speaking, when we are in a high-stress situation or a dangerous or threatening environment, our brain perceives an environment with that kind of intensity, and it goes into survival mode. There are physiological and cognitive processes that happen within milliseconds. The way I am talking about it is very "in a process," but for everyone it happens very quickly. We do not really notice it. The demand on our body and our brain systems to immediately cope with these situations and to still be able to make rational, reasonable decisions is hard when we are in an intense environment.

During this process, when we are in survival mode, our sympathetic nervous system is activated and this signals hormones to act. This is why we experience intense heart rates, our blood pressure goes up, we have rapid breathing, and we get an adrenaline rush. That also signals other hormones to go into production, like cortisol, which I think most of us know as the stress hormone. Because our stress response is activated, we are not fully able to tap into the brain function that thinks clearly and logically, that is, the brain function that is able to evaluate a situation and evaluate consequences. So things such as our insight, judgment, and memory can be compromised during these high-intensity situations. We also experience changes in emotion and behavior. This is when we get nervous or our voice gets shaky. We might have nail biting or are being fidgety. Again, this all happens very quickly within moments of exposure to a high-intensity situation. Our cognition, our thinking process, is

also impaired. Our ability to focus becomes foggy; our thinking can become unclear. It can become very hard to articulate ourselves and articulate our emotions or to understand what is going on. In particular, I think in the context of this bill, an adolescent in an interview setting who is fidgety and confused and does not know what to say—I think the implication of that is that it can be perceived by someone as being insincere or deceitful.

There is mixed research on the role of age in decision-making. What we do know is that the adolescent brain is fundamentally different than older brains. This basic difference impacts how they execute their decisions. The way they weigh their pros and cons is different. For example, adolescents tend to overestimate the rewards of a decision and do not accurately assess risks. The context and how an adolescent understands the situation is also important to consider. For example, in the psychotherapy world, an adolescent can provide assent, which means you can talk to them about the treatment and get their assent to participate in treatment as an adolescent, but they cannot fully consent to treatment without a parent or guardian. The reason for this is essentially to protect the adolescent from making a voluntary decision without weighing the alternatives.

I am now moving on from the brain function and what happens when we are in a high-intensity situation. There are other factors that influence the way young people make decisions. Social factors have a really big impact in their decision-making. As Assemblyman Flores said, there are expectations of obedience to authority figures. This highly influences a young person's decision-making. They often try saying something that they think an authority figure wants to hear. Again, when we are in this fight-or-flight response we just want to get out of the situation, so that can influence the things we say or what we think we should do. The understanding of language has a big impact because of the differences in demographics and socioeconomic status for groups of young people who come in contact with law enforcement or who end up in an interrogation setting. Another factor is the actual access to legal resources. And again, the individual's vulnerability to suggestive language is also something that can influence a young person.

To sum things up, from a clinical perspective, the decision-making process is impacted by biological and situational factors over the course of brain development. Again, while we want adolescents to have autonomy in making decisions and being able to guide their decision-making, the larger body of the research and what we see in juvenile studies suggests that, because their brain is not fully developed, adolescents are more likely to make decisions based on impulsivity and emotion rather than logic and a true understanding of an entire situation.

Assemblyman Flores:
At this time, what I would like to do is walk you through the actual bill. I wanted to first lay the foundation and really give context to what we are talking about here because it is difficult to engage in this conversation without first understanding where the science says the mind of a child is. I want to further elaborate on the importance of this. I will walk you through a hypothetical to provide some context that we can work off of and then use that to the actual

language. I am going to be going directly off the conceptual amendment that I have provided to you [Exhibit D].

For the sake of simplifying it and not getting too complex and into a lot of legal argument, let us say that there is a minor, aged 15. And law enforcement, through the course of their investigative work, makes an arrest in the good faith belief that a crime has been committed and that the individual being arrested committed that alleged crime. Everything that happened prior to that—everything that happened prior to the member of law enforcement formulating that thought process to where they got to their probable cause is irrelevant to this bill. We are in no way changing the tactics law enforcement uses for their investigative coursework. We are not in any way changing the way they enter into dialogue with folks. Understandably, you all know that law enforcement often starts an investigation because they want to figure out what is going on. They start to dialogue with people continuously. They do that all the time. At no point does an individual have to engage because they can walk away from that conversation.

We are not talking about that here. We are talking about after probable cause has been formed. That young man or woman has now been placed in handcuffs, and they started to read her or him their *Miranda* rights: You have the right to remain silent. Anything you do or say can and will be used against you in a court of law. If you do not have an attorney, one shall be appointed, et cetera. That is when a custodial interrogation is triggered. And that is where this bill commences.

I am looking at my conceptual amendment [Exhibit D] and I am looking at amendment number 1, which reads "Amend section 1, lines 2 through 12" of my original A.B. 132. When I first presented or submitted the request for A.B. 132, I submitted it in the spirit of trying to work amicably and starting with what I thought was the middle ground from a previous bill presented in 2019, Senate Bill 353 of the 80th Session. So, I thought that was the middle ground where folk had landed, and I wanted to grab that language and continue off of that. But after having an opportunity to have spoken to all the opposition, I realized that in fact was not true. It was not a middle ground at all. I decided to completely move myself away from that narrowly tailored language and present this instead. If you are curious as to why I started in one place and moved to this conceptual amendment, that is the only reason. What that reads is as follows: "Except as otherwise provided in subsection 2, a peace officer or probation officer who takes a child into custody shall make an electronic recording of any custodial interrogation of the child if alleged to have committed: (a) any act deemed to be a felony; or (b) any act deemed to be a gross misdemeanor."

What I am doing here is saying that if there is a 17-year-old or younger who has now been read their *Miranda* rights and it is alleged that they have committed a felony or gross misdemeanor, then they have to follow a set of rules after that. I will get into those rules in a second, but I want to first delineate what is happening here. You will notice that it does not include misdemeanors. There is a whole host of reasons why I did not include misdemeanors. First, I did it in the spirit of compromise. I recognize that there is a whole host of opposition, some of whom will talk about fiscal impacts and concerns, and so

I wanted to, in the spirit of reaching an amicable middle ground, try to minimize that impact. I also did it because, understandably, a gross misdemeanor or a felony can have long-lasting impacts in the life of a child that can impact their employment in the future, it can impact their liberty to severe lengths, and can have detrimental consequences should they engage in waiving away rights that they do not understand. It could impact them for the rest of their lives. That is why I am focusing specifically on felonies and gross misdemeanors.

Amendment 2 says that if the language in section 1 is true, in that a minor has been arrested and read his or her *Miranda* rights and is alleged to have committed a felony or gross misdemeanor, then, "Prior to a custodial interrogation, and before the waiver of any *Miranda* rights, a youth 17 years of age or younger shall consult with legal counsel in person, by telephone, or by videoconference. The consultation may not be waived." This goes back to everything Dr. Olivares indicated and everything that I prefaced in the opening remarks of this presentation. That key case of *Miranda v. Arizona* was so instrumental because it talked about ensuring that folks understood their protections and rights before they waived them away. But that language, that they needed to do it willingly and intelligently, often gets ignored.

We do not let minors do a whole host of things, and yet we are allowing them to willingly—and I say willingly in quotation marks—waive away their protections. It is my belief that they do not do it knowingly and intelligently. What I want to make sure is that right after they are read their *Miranda* rights but before they waive their right to remain silent and to an attorney, and before they start a custodial interrogation, they first have to have the right to consult with an attorney. The way we see this playing out, and we see it playing out in other states, is that there is an on-duty telephone number that is set up. After the probable cause is established, the minor is arrested, and the *Miranda* rights are read, you would then give a phone to that child and give them the option to speak to an attorney. The attorney could then explain to the child in a different way and using a whole host of different words whether it is to their advantage to waive away these rights. It will then be up to that child whether they want to do that. Now if they still decide to waive away their rights after all that has occurred, then at that point the custodial interrogation can continue. But otherwise, an attorney must be present should the child decide for that to be the case.

The third thing in this amendment was not contemplated in the original language, but it is equally as important in this dialogue. I want to create a modified *Miranda* warning. It is very important to make this point. The Supreme Court case laid the floor, the bare minimum, of what we must do to ensure that before somebody waives away their rights, they must be read a set of phrases and that they have to intelligently and voluntarily waive those before the custodial interrogation can occur without an attorney present or whatever it may be. They laid the floor, not the ceiling. We, as a state, can collectively say, That is the bare minimum, but because we understand that there is a whole host of Supreme Court cases that talk about how minors are different from adults and they do not understand and grasp the gravity of things in the same way adults do, we want to make sure that we expand the way we explain *Miranda* rights in a simpler way, so that minors can have a better understanding of what is happening.

By no means do I suggest that this language is perfect, that this modified *Miranda* warning will be the end-all and fix-all for minors in juvenile justice. But what I am saying is that it will be much better than quickly reading to a minor, "You have a right to remain silent. Anything you do or say can and will be used against you in a court of law." I think this can help that in a much more impactful way. Here is the suggested language that is borrowed, and currently used, in King County, Washington. And by the way, I want to thank two students, Abril and Alessandro, who were instrumental in helping me with some of this research. I wanted to do a shout-out; they are students from down south and up north, and I just wanted to say thank you.

As I walk you through this, I will explain to you the importance of it. So it begins with, "You have the right to remain silent," which is what we do now. Law enforcement is doing this now. But then it is followed by, "which means that you don't have to say anything." Number 2 is, "It is OK if you don't want to talk to me." And then number 3 is a reminder that anything that is said can and will be used against them in a court of law. "If you do want to talk to me, I can tell the juvenile court judge or adult court judge and probation officer what you tell me." It is a reminder that whatever they say can be held against them. Number 4 is, "You have the right to talk to a free lawyer right now. That free lawyer works for you and is available at any time–even late at night. That lawyer does not tell anyone what you tell them. That free lawyer helps you decide if it is a good idea to answer questions. That free lawyer can be with you if you want to talk with me." Here, we think that everybody just automatically assumes that there is this thing called attorney-client privilege and rules of responsibility, but what we are doing here is ensuring in a simplified way that the child understands that that communication is sacred and that nobody has a right to understand, hear, or know what they said to that attorney. Number 5 is, "If you start to answer my questions, you can stop and change your mind at any time. I won't ask you any more questions." This is a reminder to the child that, even if you waive your right at the beginning, at any time after, you can stop and say, You know what? I no longer feel comfortable. Number 6, a very important question, is, "Do you understand?" And even if the child says, Yes, I do understand, and even after number 7, "Do you want to talk with me," number 8 is key. Because even after all that happens, the member of law enforcement will tell them and specifically read, "I will now let you speak to a free lawyer before you answer any more of my questions." This is key to ensuring that we, as a society who recognizes key differences between minors and adults, are following everything about that as a society, but more importantly as what we are seeing as the case law and Supreme Court cases are moving towards.

Now, very briefly, I want to go over what the opposition will likely discuss. One of the things that you will hear the opposition say is, in the modified *Miranda* warning, we should have the opportunity for a parent to waive away *Miranda* rights. What they would like to see is language in there that says a child has a right to speak with their parents, or that their parents can be present, and that the parents can waive away those rights. Now I do not know about you, but when I was a kid the worst thing you could tell me was, I am going to call your mom. The worst thing you could tell me was, I am going to call your dad. I was terrified even when I did not do anything wrong. It was the most terrifying thing you could

tell me. Even if I am not scared of my parents, my parents are caring and loving humans, but they are not lawyers. They do not understand what protections are afforded to you. They may be in a very difficult situation financially, where they have to get back to work, and rather than advocating for the kid, they will serve as someone there to say, You better tell them now, I know you did it and I do not have time for this. They could end up unintentionally hurting the minor. It could be a problem rather than something that could help the child. I think it could be more of a burden.

Another thing you may hear the opposition talk about is that, if we modify the *Miranda* rights, are we going to put ourselves in a constitutional area that may infringe on the individual's rights, because *Miranda v. Arizona* in 1966 laid a parameter of what we have to do. I want to remind you that, first of all, in the state of Nevada we already have modified *Miranda* rights that are read to kids in some of our school districts. On top of that, modified *Miranda* warnings are already done across the country in different places. I counter that argument by saying that.

I want to acknowledge that there were fiscal notes that were submitted. It is impossible for the counties to have known what the real fiscal impact was because this amendment changes the original language. I want to be fair to the opposition who may say, Look, we do not even know what the fiscal impact is at this point because of this new language. And that is true. So, please do not rely on those fiscal impacts, and I want to remind you that this is a policy committee. Should we move this policy out because we agree that we should ensure that our kids understand what rights they are waiving away, then I will engage in that difficult money conversation in the money committee. But we discuss the policy here. I apologize for the lengthy intro, but it was important so that we could have a meaningful dialogue. With that, Dr. Olivares and I are here for any questions.

Chairman Yeager:
I do have a couple of questions so far.

Assemblywoman Kasama:
I have two quick questions. My first is for Dr. Olivares. Can we have a copy of her statement and presentation? I thought it was very good and it outlined a lot of good information. I do not see it as one of the exhibits, so we would certainly appreciate that. I thought she went through it very thoroughly and I would like to be able to reference and look at that. Then also, under amendment 1, where you have the change, "Except as otherwise provided in subsection 2, a peace officer or probation officer who takes a child," you crossed off "under 15 years of age." And below, in the green, you reference a youth of 17 years. Does the age need to be back in that section where you took out the 15 years? Because I see you crossed off the years, but for consistency does 17 not need to be back up there?

Assemblyman Flores:
I want to ensure that nobody, by any means of the imagination, thinks our Legislative Counsel Bureau (LCB) prepared this. They would have done a much better job than I. The

short answer is that the way amendment 2 reads with the actual usage of "17 years of age or under" will reflect and mirror the proper usage of whatever phrasing LCB comes up with to ensure that it is someone aged 17 or younger. Rather than saying "child," section 1 will read a "youth 17 years of age or younger." However, if the definition already in the *Nevada Revised Statutes* (NRS) is of a child 17 years of age or under, section 1, subsection 3 will then be changed to reflect that. There will be consistency and a mirror of the language in that sense.

Assemblywoman Bilbray-Axelrod:
This bill brings back a lot of memories from last session when I brought the marriage bill, and just showing that children's brains are not where we are as adults. I was looking at the letter in opposition [Exhibit E] from the Nevada Sheriffs' and Chiefs' Association, and I know that they are working off of the original bill, based on the date. But the incident of which they are hypothetically speaking, in which a little boy steals a bike out of a garage and the person sees them going north and so the police go after them, they are basically making the statement that the officer cannot question the boy because of this bill. My understanding is that *Miranda* rights are read to someone once they are being arrested. So an officer could still have a conversation and surmise what the situation was. Is that correct? Or does this bill somehow not allow an officer to do that?

Assemblyman Flores:
The short answer is that it happens every day. There are millions of YouTube videos, and I say that anecdotally and jokingly, where individuals are constantly engaged by law enforcement. Whether a child in that scenario would want to continue that conversation, or even an adult, where they do not yet have probable cause to make that arrest is a different question. But, in the course of an investigation, that always happens. Law enforcement does not somehow sit quietly on their hands and say, There is a course of an investigation but I do not know how it establishes probable cause to make that arrest, and I am not going to engage anyone. That never happens. They consistently engage individuals all the time until they can get to a point where they have heard or seen something that they want to pursue further, or whatever else they have to do. They talk to other individuals. This bill in no way impacts the scope of the investigation that happens before you actually apprehend somebody, read them their *Miranda* rights, and want to engage in a custodial interrogation.

Assemblyman Wheeler:
It has been a while—I first joined the Judiciary Committee in 2013—since I actually read the *Miranda v. Arizona* decision because one of the bills came up during that period. I think it actually says in there it must be "knowingly and intelligently;" at least those are the words that you just used. I have seen cases over and over, and even with adults, where the judge goes in and throws out a conviction even though they were properly Mirandized because the defendant did not know exactly what was being said, and did not know what his rights really were, but he waived them anyway. And Dr. Olivares, for instance, said that the brain does not develop until the mid-twenties. I think that is what she said. I can understand that. Now does the judge not at this point have the right to say, The confession was not proper, even though they were properly Mirandized, because this child did not knowingly and intelligently

waive those rights? Their parents or lawyer should have been there. So, by passing this bill, are we not actually removing not just prosecutorial discretion, but judicial discretion in some cases? If Dr. Olivares is right in that the brain does not develop until the mid-twenties, why are we letting these people vote? That is just a sidebar.

Assemblyman Flores:
I would like to start off by saying how overly burdensome and expensive it is that we would have to allow for a kid to go through the process of a public defender, to show up to court, get attorneys involved, spend thousands of dollars, and have an entire potential jury before we can correct the wrong of that member of law enforcement. If we want judicial efficacy, why not preemptively ensure that the minor understands what is happening on the front end, rather than having to go through this lengthy, expensive, burdensome, and traumatic process for a child to get to where we could have fixed it in the front end. I will say that first.

Second, I agree with you. In fact, in *J.D.B. v. North Carolina* [564 U.S. 261 (2011)], a 2011 Supreme Court case, Justice Sotomayor in that case said, "It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality, we hold that a child's age properly informs the *Miranda* custody analysis." I say that because you are hitting on a very important point, which is, how do you knowingly and intelligently waive away a right? The Supreme Court has already discussed it in that particular case where they are saying, We do not know and we do not think that they do, or that children understand what they are knowingly and intelligently doing. We have a Supreme Court case on point that 100 percent delineates and talks about exactly what you have just said. We will, in the future, be having conversations about whether 18, a number that we selected years ago, or 21 is actually an age of adulthood—of understanding consequences. We will definitely be engaging in that conversation.

I know you brought up why can folks at the age of 18 vote, and that is a conversation to be had in a different bill presentation. But the question that is on the table here is, Should a minor be allowed to waive their rights when we are making the argument that they cannot do it knowingly and intelligently?

Assemblyman Wheeler:
You brought up the cost, and I am looking at 12 fiscal notes. Some of them do not know the cost yet, and they said that in the fiscal notes, but others have. It is hundreds of thousands already. We have to look at the costs as well. I appreciate your bringing this bill forward and I think it is interesting.

Assemblyman Flores:
I will say that I do think we have to look at all sides of the cost, and there is a fiscal question here that you have to take into account. But I want to follow up with, What is the cost to society that we have to correct something that could have been prevented? I genuinely believe that this could have been cheaper if we look at all those cases that got to the point of

a judge intervening to correct a wrong that was done at the very beginning. I genuinely think that the cost to us would have been cheaper. But more importantly as a society, the cost of protecting our kids is much more important than that fiscal impact.

Chairman Yeager:
We are going to take a couple more questions and then we are going to have to let Assemblyman Flores get over to the Government Affairs Committee where he has a hearing that he is going to be chairing at 9 a.m. I am going to take two more questions before we move on from the presentation, and those two questions will be from Assemblyman Orentlicher and Assemblywoman Cohen.

Assemblyman Orentlicher:
I am glad to see that we are considering this bill. I have a question about your proposed amendment number 3. You say it is good to have revised *Miranda* warnings for minors. If we put this in statute, I wonder if it makes it too hard to modify it over time as we learn more about best practices. Is there a way to give the Nevada Supreme Court some kind of authority, guided by neuroscience understanding, to modify what we set out in statute?

Assemblyman Flores:
I appreciate that sentiment. In fact, if I can be honest to the Committee, I have devoted an excessive amount of time and sleepless days for a few weeks here in trying to come up with an understanding for what the best approach on that modified *Miranda* language is. For the reasons you stated, but more importantly, for the reasons that there are a whole host of other phrases we could use, I vetted this through many elementary school teachers. By the way, I need to take this opportunity to say thank you to them. To all of you who read this to your students and gave me feedback, I am so incredibly grateful to you because you are part of the genesis of why this bill is happening. Thank you to all of our teachers that came through. I am open to the idea, Assemblyman Orentlicher, of engaging in that conversation. I am not, in any way, making the argument that these are the only words we can use. In fact, reasonable humans can sit in a circle and further delineate some of this, so I am open to that, Assemblyman Orentlicher. If you have any other ideas, I am here for you.

Assemblywoman Cohen:
I have a question about false confessions. I looked up *J.D.B. v. North Carolina* and I was reading some articles about it, and the articles discussed how juveniles make up a disproportionate number of those who falsely confess. The number they said was upwards of one-third of false confessions were from juveniles. My question for you, Assemblyman and Dr. Olivares, is if you do have any comments about false confessions? Because I think you kind of touched on it but did not actually go in depth on that. More than that, what I am looking for is a response, but I am not sure who is going to be in opposition. If any of the law enforcement agencies are going to be in opposition when you testify, I will ask you to let us know what the agencies are doing to prevent false confessions from juveniles.

Assemblyman Flores:
There is a whole host of documentaries, most recently *The Central Park Five*, that I believe many of us saw on the Public Broadcasting Service. There are a whole host of documents online that you can do a quick Google research of, that go deep into false confessions. For the sake of clarity, this goes to the very heart of what we are talking about here. There are kids who, because they hang out with older kids who are over 18, are told, Look, just take the hit and you can be part of the crew, you are going to show your colors, this and that. There are kids who sometimes take the blame to protect their older siblings, parents, or family members. There are kids who are put in such a position. If you have an opportunity to, go look at *The Central Park Five,* where you will see that within the interrogation tactics that were used, they will say, kid A is saying you did it. Now kid B is like, What, kid A said that I did that? Now kid B is in a responsive, emotional, and reactive state. He might say, well kid A is the one that actually did it. And then they are doing that with kid C and kid D. There are all these different intimidation tactics and tactics that are used that often lead to this issue that we are talking about: false confessions. I am just using that as an example because you can easily look that up and give yourself an opportunity to see some of that. Watch the video and it will walk you through that.

But this is exactly at the heart of what we are getting at here. I will say that in the *Miranda v. Arizona* case, if you read a lot of the opposition that was submitted against the *Miranda* rights, the very first thing that you heard from a lot of law enforcement agencies was, You are tying our hands and you are no longer allowing us to do our job by doing this. You are changing the procedures that you have in place. That is what you are going to hear again today. I ask you to just keep in mind what is at stake; it is the rights of a minor and ensuring that they know what they are waiving away.

Chairman Yeager:
I realize there probably are additional questions, but due to time and Assemblyman Flores' having to get over to the Government Affairs Committee, we are not going to have time for additional questions for him this morning. However, as you all know, he is in this building and is more than willing to talk about this bill. If you have additional questions, please follow up with him at another time. Assemblyman Flores, I know you have to go, so I will excuse you now. If you are able to get back for concluding remarks, then that is great, and if not, we can either waive those or Dr. Olivares could perhaps make some concluding remarks on your behalf.

Assemblyman Flores:
If I may make a request, I know our Vice Chair and I do need to be at the other hearing, but if we could potentially allow for the opposition to go first, what I could do is briefly close out my remarks at that point. And then afterwards you can go into the neutral and support if that would work. And Dr. Olivares will stay on the line to allow for any additional questions. If that is the pleasure of the Chair, otherwise I can jump off now and ask Dr. Olivares to do the closing remarks. It is whatever you wish.

Chairman Yeager:
Thank you, Assemblyman Flores, I would like to stay in our traditional order so we will do support first and then neutral. If you are able to jump on great, if not we will ask Dr. Olivares to take your place in the concluding remarks.

At this time, I am going to go to testimony in support of Assembly Bill 132. I do not believe we have anybody on Zoom with us, but I am sure we have some folks on the phone. Before we go to the phone line, I just want to let folks know who are wishing to testify on any position on this bill to please keep your remarks to two minutes. I will be timing. I want to give everyone a chance to speak. If your remarks can be done in less than two minutes, that is great as well. We do have another bill on the agenda today as well as a floor session, so that is why we have to get through this bill in a timely fashion. If you could do that for us, it would help us move along smoothly and it would give everyone who wants to testify the opportunity to do so. At this time, could we go to the phone lines to see if there is anybody there who would like to testify in support?

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
I would like to thank Assemblyman Flores for bringing this bill forward. This gives people a better understanding of legal processing and the consequences of various legal choices, such as forfeiting their right to remain silent or to have an attorney. It also helps show the differences of those who are under 18, who often misunderstand the concept of a right in general, and the *Miranda* rights in particular. They receive fewer alternative courses of action in legal proceedings and tend to concentrate on short-term, rather than long-term, consequences. For example, youths often misconstrue the right to remain silent, believing that it means they should be quiet until they are told to talk. Nor do they understand the right to have an attorney present without charge before they talk. These misunderstandings raise concerns about children's and young adolescents' confidence to stand trial in adult court. The Sheriffs' and Chiefs' Association opposed the bill, and they cite that the restrictive language in section 1, subsection 3 would make it a burden for the juvenile and the county. I propose that it would be more of a burden to all for a youth to be dragged through the justice system. They see it as a burden, and I see it as protection for our most precious commodities: our youth. We support this bill.

Chairman Yeager:
Let us take the next caller, please.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice:
We recognize the balance of power between adults and children in all other aspects of the law. It is time to officially recognize it here. I do not believe that the concerns of the Nevada Sheriffs' and Chiefs' Association are founded based on the one-off hypothetical presented. Children are more vulnerable and cannot understand things the same way as adults. We recently just stopped chaining up children in Nevada after a long fight. As Frederick Douglass said, "If there is no struggle, there is no progress." This is a struggle worth having for much-needed progress towards protecting children when it comes to

waiving their *Miranda* rights and giving them counsel in difficult situations. We strongly urge the support of this Committee.

Chairman Yeager:
Let us take the next caller, please.

Tonja Brown, Private Citizen, Carson City, Nevada:
We strongly support this bill. There was some testimony given during the presentation, and I do not know if I missed it or it was not brought up. Most officers are truthful, but juveniles, or even adults, believe that the officers are being truthful when they are talking to them and it puts pressure on them—that is, on the defendant. When an officer can get away with lying to an individual, you are more likely to get false confessions. I wanted to touch on that. I wanted to touch on the *Miranda* issue. I do not know how many cases over the last several decades since *Miranda* was first established that were juveniles and who were, and still are, incarcerated in our Nevada prison system based on no *Miranda* given.

I am going to read a small portion of an adult Nevada Supreme Court case in which it stated that the Appellate contended that his interview constituted a custodial interrogation and that evidence derived from that interview should have been suppressed because he was not advised of his rights under *Miranda v. Arizona*. It goes on to state that the counsel was not ineffective for making a reasonable strategic choice. Basically, what the order is saying is that all evidence that was seized prior to trial, during interrogations, and the individuals not given *Miranda*, if the attorney argued that it was a strategic decision to not suppress the evidence and to take their chances at trial, and that is what they do, then it is not a violation of *Miranda* rights. So, I am curious as to how many people have been affected by no *Miranda* warning, even as a juvenile, today. And will this move forward? Could it be possible to include "retroactive" to look at some of those cases in the past where *Miranda* was never given in cases and yet the courts have upheld that *Miranda* was not necessary, even though the evidence obtained during interrogation was without *Miranda*?

Chairman Yeager:
Are there additional callers in support?

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
We want to thank Assemblyman Flores for bringing this crucial bill to ensure that the constitutional rights of our children are protected. States across our nation are looking into ways to protect our vulnerable youth by taking steps to reduce coerced and wrongful confessions. The Juvenile Law Center reports that there is a disproportion of individuals who are arrested and interrogated, and those individuals are in particular at high risk of facing interrogations and coercion. They also found that adolescents waive their *Miranda* rights at an astounding rate of 90 percent and also make false confessions at exponentially higher rates than adults. The Innocence Project has found in studies that 25 percent of wrongful convictions were overturned through DNA testing involving false confession. We appreciate the attempts in order to ensure that children understand their *Miranda* rights,

something that my adult clients do not always understand, when making potentially life-altering decisions with someone who is on their side. The requirement of recording is crucial because not all officers or probation officers wear body cameras.

If this bill were passed, my office would create an on-duty system where we would have one phone number for police agencies to call during off hours in order to ensure that we have an attorney present, either by phone, videoconference, or in person. The Department of Indigent Defense Services, which was established by this Legislature through Assembly Bill 81 of the 80th Session, is also required to provide this oversight and identify ways to ensure best practices for delivering the most effective indigent services, including ensuring access to attorneys. Please pass A.B. 132 to ensure that we can protect our children. This can and should be done in Nevada.

Chairman Yeager:
Let us take the next caller in support, please.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
We believe that all youths should have access to the resources they need to navigate the criminal justice system, regardless of the severity of the charges. Provisions in A.B. 132 would connect into the foundational principles of human rights for children and would help increase fairness and better ensure justice for the youth of Nevada. We appreciate your support.

Chairman Yeager:
Let us take the next caller in support.

Brad Keating, Director, Government Relations Department, Clark County School District:
We appreciate your hearing this bill today. Assembly Bill 132 is an important bill for the Clark County School District, and we appreciate Assemblyman Flores for working so closely with us on this bill. We appreciate his work on making sure the bill works for the Clark County School District Police Department and for making sure that this hotline is created so that we can reach out and make sure that students do understand their rights. We already provide the *Miranda*-plus, but we think the hotline is an incredibly effective way to make sure students are engaged and understand what is happening as we begin a process of working with those students. We thank Assemblyman Flores for bringing this forward and urge the Committee for its passage.

Chairman Yeager:
Let us take the next caller.

Joseline Cuevas, representing Mi Familia Vota:
We are here in support of A.B. 132, with the added amendment to include children of all ages. Minors cannot do many things without parental consent. First and foremost, we want to thank Assemblyman Flores and the presenters for presenting A.B. 132. It is important to

understand that children who are being interrogated are protected as well as in the entire juvenile justice system. We strongly encourage the much-needed transparency that we have been asking for. After being taken into interrogation, immigrant children can be put at high risk for deportation when they were not in the first place—especially without transparency. In a situation of fear, children are incapable of making their own decisions or giving their own consent. Once an immigrant minor has been placed in police custody, there would be a record of them. Being in a state of fear would not allow them to make the correct decision and they may admit to things they did not do without a lawyer present. We need to ensure that we are protecting our immigrant children and that we are not putting them at high risk for deportation. We can do this by supporting A.B. 132 and asking if this bill could be extended to any circumstances where a child can face criminal charges, including a misdemeanor. This bill will protect our immigrant community from falling into the criminal justice system. We ask the Committee to support A.B. 132.

Chairman Yeager:
Are there other callers in support?

Jim Sullivan, representing Culinary Workers Union Local 226:
The Culinary Union supports Assembly Bill 132 because it ensures the fulfillment of the constitutionally protected right to legal counsel for all children in Nevada, regardless of background. It ensures that minors' legal rights are protected throughout the judicial process. The Culinary Union represents 50,000 working families in Nevada. The majority of members are people of color and tens of thousands are parents. There are significant racial disparities in the outcome of our legal system, and that is why we must standardize and streamline the juvenile judicial process, which will result in more just legal outcomes. A presumption of child indigency will ensure a speedy legal process and will avoid a number of complicating factors stemming from a family's lack of ability to pay for an attorney and the burdensome requirement that they prove that lack of ability. In addition, ensuring recordings of juvenile interrogation as mandatory will protect all parties by encouraging legal and ethical behavior and creating a clear record of fact. While we would like to see this bill apply to any circumstance where a child could face criminal charges, this is a great first step. Assembly Bill 132 is a commonsense fix that will aid in the fulfillment of children's constitutional rights. As the largest organization of parents in Nevada, the Culinary Union strongly supports A.B. 132, and we encourage you to do so as well.

Chairman Yeager:
Let us take the next caller. [There were none.] I will note for the record that there is a letter in support from the Nevada Attorneys for Criminal Justice; I think Mr. Piro testified on their behalf. It is uploaded on the Nevada Electronic Legislative Information System (NELIS) [Exhibit F]. There also is another letter in support from an individual named Zachary Kenney-Santiwan [Exhibit G]. I wanted to flag those for the Committee, that there are a couple other supportive letters as exhibits. With supportive testimony behind us, I will now close the phone lines to support. I do not think we have anybody on Zoom with us in opposition, but let us go to the phone line. I think we have a number of folks there who would like to provide testimony in opposition.

Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County:
I want to start by thanking the bill sponsor, Assemblyman Flores, for meeting with us regarding the proposed bill, the amendment, and some of our concerns. I know that my juvenile justice folks will be testifying, so I am going to let them get into the concerns regarding the policy impacts for that department. But I did want to state, as the Assemblyman stated, that our fiscal note in the system is not correct and we are still working to really understand what the fiscal impact to the county would be based on what that final bill language looks like. But, for starters, I want to highlight that just talking about an on-call public defender to be available for all juveniles starts at about $80,000, based on some comparisons that we were able to do with our district attorney's office. That is just the start of it in terms of fiscal impacts. While I know that this is a policy committee, I want to highlight that local government fiscal impacts do not default to the money committees unless there is an appropriation or state impact. Based on my interpretation of the bill, I do not believe that this is something that would likely go to one of the money committees. We look forward to continuing to work with the sponsor regarding some of our other concerns, but I wanted to highlight that fiscal concern from the county and apologize that, while the amendment would have changed the fiscal impact anyway, that fiscal note in the system is not correct.

Chairman Yeager:
Let us take the next caller, please.

Michael Whelihan, Assistant Director, Department of Juvenile Justice Services, Clark County:
We oppose the bill because we feel there are some unintended consequences that will occur. We are not opposed to *Miranda* rights changes; we just want to make sure that there are no unintended consequences. We just got the bill late last night. We are not in support of taking the parental rights away. The best practice in juvenile justice is to allow family engagement. So, as a parent, I do not think that is appropriate. As far as the department goes, there is a concern that the bill and amendment number 1 [Exhibit D] talks about custody, and the intent of the bill is unclear because custody, for a law enforcement officer, is once you put a youth in handcuffs, then it would be considered custody. We need to understand what the impact or intent of that piece of the language is. We are also concerned that on any given weekend we can have twenty to thirty youths detained in Clark County. If the attorney does not answer the phone, or if there is a backlog of calls waiting, kids are going to get detained and there is a huge fiscal cost in Clark County when it comes to that. We have concerns about conflicts between attorneys. If you have people staffing the phone and they have similar youth or adults that are working on the same case, then there can be conflicts with attorneys, and the staffing of the 24/7 call is going to be very important to keep kids out of our institutions. Over the last four years, the Department of Juvenile Justice has diverted 14,000 youths out of the criminal justice system to our county harbors. In 2019, the Department of Juvenile Justice had 11,700 referrals, 5,700 of which were diverted out of the system. We have some concerns with that.

Then amendment number 2 is unclear because Assemblyman Flores talked about how they will not be able to waive their rights, but if you read the *Miranda* warning, it says, "If you do want to talk to me, I can tell the juvenile court judge or adult court judge and probation officer what you tell me." Then later in the *Miranda* warning, it says that they cannot. I think there are some inconsistencies in the language and the fiscal impact is going to be huge. For example, if a kid has a gun or they are in a car with five or six people and there is a gun found in it, at that point the law enforcement agency would probably place everyone in handcuffs. So, what would be the unintended consequences is that all six would be arrested and then, if someone does not answer the phone, how long do the police have to wait before they detain the kids? Then you are going to have some scheduling issues once the kid is detained in our juvenile detention center. Law enforcement could have days off, the attorney could have days off, so the kid is going to be sitting there in detention. The Department of Juvenile Justice has tried to lower our detainment over the last years. We want to keep kids out of detention. We want to make clear that is our goal—to keep the kids out that should not be there. We have limited bed space and this bill could cause overcrowding in our institutions.

Chairman Yeager:
Let us go to the next caller.

Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County:
Even though this is a policy committee, it is our only opportunity to express our concerns about the fiscal impact to Clark County. Clark County opposes A.B. 132 as written and as amended due to the fiscal impacts on Clark County as a whole. Clark County's opposition is based on the fiscal impact to the county and not the policy issues being discussed today. Some of the policy issues were mentioned by our Assistant Director of Juvenile Justice Services. We did submit a fiscal note a while back based on the original bill that is on NELIS. However, that fiscal note is no longer accurate based on the conceptual amendments proposed today by the sponsor. We will review the conceptual amendments in more detail and communicate our concerns with the sponsor.

Chairman Yeager:
Let us take the next caller, please.

Elizabeth Florez, Interim Director, Department of Juvenile Services, Washoe County:
In juvenile services in Washoe County, we recognize the critical importance of due process rights of any person, including our youth. We also recognize that the adolescent brain is distinct from adults. The previous presenters provided valuable information about both adolescent development and instances of bad custodial interrogations. As a probation department that continues to embrace juvenile justice reform, that continues to divert the vast majority of referred youth away from court proceedings, and that prides itself in developing positive relationships with them, we feel this legislation will result in extended detention time for our youth. Our mission is to serve both youth and our community, whom we have sworn to protect. To Assemblywoman Cohen's previous question, both law enforcement training as well as adolescent-specific training inform our practices around proper custodial

interrogations. As I listen to testimony, I am curious to know the prevalence of improper interrogations in the juvenile justice arena.

Chairman Yeager:
Let us take the next caller, please.

Jo Lee Wickes, Chief Deputy District Attorney, Juvenile Division, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
I am speaking on behalf of the Nevada District Attorneys Association. We are here in opposition to sections 1 and 2 of the bill before us this morning. But we believe there are some merits to the language proposed by Assemblyman Flores in section 3, and we believe that we should engage in some further discussion. One of the concerns that I have about this specific language is that it appears, to me, to be at odds with the Nevada Supreme Court case law that requires the use of the language for youths that they have a right to have a parent present. It is in large part compatible with the training that my office provides whenever possible to P.O.S.T. [Nevada Commission on Peace Officers' Standards and Training] and new officers about explaining *Miranda* and answering questions and providing information to youth in a youth-friendly manner. With regards to sections 1 and 2, I do not believe that it is a good rule regarding custodial interrogations. Custodial interrogation is fact-specific and often litigated. We are also concerned about conflicts of interest if there is an attorney available to field phone calls. How many attorneys would be available, and would there be conflicts of interest? In the 2019 Session, there was discussion about waivers and conflicts of interest that required that the youth on both sides of the possible conflict be advised and both agree to the waiver of the conflict.

We think that this will have a huge impact on juvenile justice in the state of Nevada, including law enforcement's ability to conduct investigations in the field, due to the fact that custody is a little bit more complicated than putting handcuffs on and putting them in the car.

Chairman Yeager:
Let us take the next caller.

A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
Unfortunately, the Las Vegas Metropolitan Police Department is opposed to A.B. 132 with the conceptual amendment presented by the bill's sponsor. The Las Vegas Metropolitan Police Department supports electronic recording of interrogations, found in section 1 of the amended bill. We also support notifying parents or guardians of juveniles who may be interrogated relating to gross misdemeanor or felony crime investigations which they may be accused of. However, the Las Vegas Metropolitan Police Department does not support the requirement found in section 1, subsection 3 of the amendment that requires the juvenile to consult with counsel prior to waiving their *Miranda* warning. This subverts the authority of the juvenile's parents or guardians to choose whether to consult counsel. Current *Miranda* warnings read to juvenile suspects end with a statement that allows the juvenile to speak to

parents or guardians and for those parents or guardians to be present when interviewed. It would be very likely, with this amended language, that the mandate to require counsel to be consulted prior to questioning would result in juveniles being simply arrested once probable cause is established without interviewing the juvenile at all. This will inhibit the ability for the other side of the story to be heard. There are many circumstances where, by interviewing the suspect, a more clear understanding of what events occurred can be established and then no arrest will be made. Thus, the traumatic event of being arrested can be avoided.

I would like to take a second to give a practical application of how *Miranda* works in the field, which was referenced by the prior opposition testimony. She alluded to practical application in the field. The way that *Miranda* works is that it is based on custody of the person. It does not necessarily have to do with the person being placed in handcuffs and loaded up in the back of a police vehicle. It has to do with whether that person is free to leave, and if the questioning being conducted by the law enforcement officer is going to potentially incriminate a juvenile or adult. If you were to stop an individual that matched the description of a person that had committed a theft, burglary, or other crime of gross misdemeanor or felony nature, and you used your lights, your sirens, you gave them commands, and you used your authority of being a police officer in uniform, the feeling of their not being able to leave is going to be key to that. And if you continue with the questioning regarding a criminal act which you have reasonable suspicion to believe that they committed, you are now violating their *Miranda*. At that time, *Miranda* would need to be given to them, because they have no feeling of whether they can leave. In a practical application of that, as it goes back to Director Spratley's scenario, if you have probable cause to make an arrest, then there is no requirement to interview the person that you have probable cause against. You can simply arrest them, unfortunately, without their being able to provide their story. By giving them their *Miranda*, and letting them know what their rights are, then they can choose whether they want to tell their story. There may be information that they can provide which would, in essence, clear them of what they are suspected of doing. That may prevent them from being arrested.

I am certainly not a legal professor or an educator per se, but that is a quick reference of how *Miranda* works in the field. As far as Assemblywoman Cohen's question regarding measures taken to address false confessions, Assemblywoman Cohen, I will follow up with you and the Committee. I do not feel comfortable addressing that because I am not positive on what we have as policy. But I will look into that and get you that information as quickly as I can.

Chairman Yeager:
Can we check one more time to see if there is anybody in opposition? [There was no one.] I will close opposition testimony. I am now going to open neutral testimony. Could we check the phone line to see if there is somebody there who would like to offer neutral testimony?

Liz Davenport, Legislative Aide, American Civil Liberties Union of Nevada:
We appreciate Assemblyman Flores for bringing this bill. At this time, our position is neutral. It is our position that this bill should extend to any circumstances where a child could face criminal charges, including on a misdemeanor. We understand the challenges faced in creating this bill and would appreciate engaging in conversations about how different interactions can create a criminal record and the impact that causes. We do support efforts to protect children, especially at such an important and vulnerable moment in children's lives. Given the current climate, it is important to move this bill forward. And for the reasons discussed above, the changes in this bill are enough to move us to a neutral position. We look forward to hopefully engaging in future discussions.

Chairman Yeager:
Could we check to see if there is anyone else in neutral? [There was no one.] I am going to close neutral testimony and, right on cue, I see we have Assemblyman Flores back with us. Assemblyman, please go ahead and make any concluding remarks that you might have on A.B.132.

Assemblyman Flores:
I am 100 percent convinced that the opposition is not coming from a "We do not want to help youth" perspective. I genuinely believe that they are concerned about what this could mean procedurally and how it could impact their day-to-day investigations. But I would like to reiterate a few points. First, when *Miranda v. Arizona* occurred, that was the number one concern raised by law enforcement—that is, how this would impact investigative processes. Today we could not imagine a time where *Miranda* rights are not read prior to a custodial interrogation. Number two, we are talking about and narrowly focusing on custodial interrogations and making it abundantly clear that the leeway we have prior to a custodial interrogation occurring, that investigative process is not being interrupted.

I did not have an opportunity to hear all the opposition and that was not purposeful. I have another meeting that I am conducting. But I had an opportunity to briefly get a synopsis of some of the opposition. I heard that there was a concern about amendment 3, the modified *Miranda*, potentially being at odds with the Nevada Supreme Court, where there is a precedent that a parent can be present. I would ask if that were the case, then does that mean that in every single child interrogation that is happening right now, we are always ensuring that the parent is available? Is that the current rule and customary approach? Every single time law enforcement reads the *Miranda* rights to a minor, are they doing that now? I just wanted to see if that is the case.

There was an issue raised that not interviewing and arresting a minor can be more traumatic than interviewing and arresting a minor. I do not necessarily see the connection there, the nexus as to that. Arresting a minor will always be a traumatic experience for a child. That is the whole point if it is going to occur, because, again, they have already formulated an investigation, they have already gone through the *Miranda* readings, and they are already going to take that child into custody. If that is the case, then why not ensure that they first have an opportunity to speak to counsel?

Then lastly, I would just make the point that even if we modified that *Miranda* reading to say that they have an opportunity to speak to a child, it does not negate the importance of saying that they must first consult with an attorney prior to speaking to the member of law enforcement. I will now close out my presentation.

Chairman Yeager:
We appreciate your being here to present the bill and being willing to work with all of those who are interested in this bill. With that behind us, I am going to close the hearing on Assembly Bill 132. I am going to ask all of the Committee members to take a deep breath as we get ready for our next bill, which I do not think will take quite as long, but we shall see. At this time, I will open up the hearing on Assembly Bill 32.

The good news, Committee, is that I do not believe we have any amendments to the bill. At least I do not see any online. I want to welcome to the Committee Judge Melissa Saragosa, who also over the years has been a frequent participant in the Assembly Judiciary Committee. She is here to present Assembly Bill 32 to us and to answer our questions. We will give you a chance, Judge, to make your presentation, and then I am sure we will have some questions.

Assembly Bill 32: Revises provisions relating to the filing of a civil action regarding a motor vehicle. (BDR 43-387)

Melissa Saragosa, Justice of the Peace, Las Vegas Justice Court:
What I would like to do to start on Assembly Bill 32 is to give you a glimpse of what currently happens when these kinds of cases come before us. These are cases where a vehicle owner files a complaint for expedited relief—emergency situations—for either an illegal tow or an illegal immobilization of their vehicle—putting the boot on the vehicle, so to speak. My intent is to show you where we encounter some problems in processing these cases. And then I will go through the bill to show the amendments. Although it appears like there is a lot of blue on the bill, it is not that much. It is really just rewording and reworking a lot of what is already in existence.

Currently, on these cases, a vehicle owner will file this complaint for expedited relief and in most cases, I am talking 90 percent, they name the tow company as the defendant. But the tow company is generally just taking their direction from the property owner. While the tow company is the most knowledgeable about the circumstances regarding the tow, they are not the person who directs the tow and they are not the person identified in *Nevada Revised Statutes* (NRS) 487.037 and 487.038 preceding this statute, who is authorized to order the tow of a vehicle. They are just an agent of the property owner. The proper defendant is the property owner from which the vehicle is immobilized or towed. What happens when we get those cases now is that the language of the current statute requires the court to set this emergency hearing. The idea is to get to the court as quickly as possible, limit the storage costs that are being added every single day, get to the court quickly, have the court make a determination as to whether the tow or immobilization was lawful or unlawful, and make a

determination as to under what circumstances will the vehicle owner be able to get their vehicle back in an expeditious manner.

When we get these, we have to set them for a four-judicial-day hearing, which is very fast. Oftentimes, it is not enough time to even get the property owner or tow company served with notice of the hearing. Four judicial days is tough. It is hard, and we end up continuing a lot of cases just to be served again, which makes it eight days instead of what might be five judicial days. I did not change that and that is not really my issue, but I throw that out there for your consideration. We do have to continue those cases a lot. When we do, if you think about it, if we added one more day on instead of the four judicial days to give time for the constable to serve, we would save three additional days of storage cost. Nonetheless, what happens is that we set it for hearing, we get to the hearing, and now we are at the hearing. Everyone has come down to the courthouse and we tell the plaintiff, the vehicle owner, I am sorry, but you filed it against the tow company and that is the wrong person. We do not even have the right defendant here to adjudicate your case. In that situation, generally we allow them to amend, if they know the property owner, at that time. Or we give them time to figure out who the property owner is, they name the right person, and then we continue it and start all over again, which just ends up being a waste of a hearing and a waste of everybody's time coming to the courthouse. We do not want people coming down when they cannot realistically get their matter resolved.

It is also common for the vehicle owner to delay in bringing this kind of complaint for expedited relief. The nature of it, expedited relief, is intended to give people a rapid method of getting their vehicle back and getting that determination. But for some reason, maybe it is because they are not knowledgeable on the process or they do not look into it, we get these kinds of complaints that are months after the tow. It is not infrequent; it is fairly regular that we will get a complaint months after the vehicle was towed. In this situation, the problem is that the storage company, which is generally the tow company, has already gone through a whole separate legal process to dispose of the vehicle through other legal means. Sometimes that is an auction of the vehicle. It is a collateral process that is not addressed by this bill. But realistically, that is what happens. So now the court is rushing to set up a four-judicial-day hearing and bringing the people in, and yet, we are left without any realistic remedy. The vehicle is already gone and disposed of. I cannot now order the tow company to return the vehicle to the vehicle owner because it has already been disposed of through other lawful means. So the relief that they are seeking is no longer available. Instead, they are authorized money damages through a full civil action or small claims or otherwise, but they would not be authorized the expedited relief that they are seeking.

We also see this process frequently being utilized by individuals who have had their vehicle impounded or towed by a law enforcement agency. That is specifically not authorized in this statute. It says that the jurisdictional trigger for this kind of expedited relief is a tow pursuant to NRS 487.037 or 487.038. Neither of those covers a tow by law enforcement. So again, we set it for hearing and bring everybody down only to tell them, Sorry, you named the wrong person, and we dismiss the case.

Finally, we see vehicle owners file this type of complaint for expedited relief when they have already recovered their vehicle. They already have their vehicle back so the expedited relief they are seeking again is moot; they have already recovered their vehicle. That is not to say that they may not have suffered the cost of storing and towing the vehicle, and they paid that to get their vehicle back, and maybe they are looking to recover that cost. But that is not what that statute is designed for. It has never been designed for that. That is not one of the remedies the court is authorized to give in this kind of case. It is also not the type of case that we would rush to set in those four judicial days.

That was the background on some of the issues that we see. My goal in bringing this bill forward was to provide more guidance and clarity and allow the court to dismiss those cases on the front end before we waste people's time coming down to court and rushing for these hearings. It really is all one section, because it is all one statute, but I will start with section 1, subsection 1. What this does is clarify that the expedited relief process in this statute is in addition to any other complaint that they may file for damages, or any other civil action, whether that be small claims, civil, or otherwise. They still have that option. This just distinguishes that. It allows the expedited relief to make that quick determination, that is under what circumstances the vehicle owner may recover possession of the vehicle, depending on whether the court finds it lawfully or unlawfully towed or immobilized. It outlines four jurisdictional prerequisites, three of which are already in existing law. Those are: that it was towed pursuant to one of the statutes; that the owner believes it was unlawfully towed; that the cost of towing and storing does not exceed the limited jurisdiction's $15,000 limit; and then the fourth is one that I have added and amended—that the vehicle is being stored or is currently being immobilized as a result of the towing or immobilization so that the quick remedy that the plaintiff is seeking is not moot.

Subsection 2 sets the deadline at 21 days. This 21 days, which is intended to be calendar days, is set because it offers the vehicle owner that quick remedy that they are seeking, but it allows for us to have a hearing on the issue before the dates for which the company that is storing the vehicle can exercise their right to dispose of the vehicle through other lawful means. We want to make this a relevant hearing that we can give an actual remedy to. If they wait too long, then their remedy is lost. The 21 days is identified at a point where we can have that hearing before those other methods of disposition come into play.

We outline in this section as well, in paragraph (b), who the proper defendant is. That comes from language taken from NRS 487.037 and 487.038—the person who is directing the tow. It clarifies who they should be filing this complaint against, rather than the tow company who is just the agent of the property owner who orders the car to be moved or immobilized.

Subsection 3 allows the court to dismiss those cases that are not properly brought forward on the face of the complaint so that the person can make those corrective measures to amend or refile in the proper name without the need to come to court and have that rush for the four-day hearing. This will save us a lot of time and from having needless hearings where we just end up dismissing a case.

Subsection 4 provides a couple of minor changes. One is that it converts the four working days into seven calendar days. Again, you may want to give an eighth or ninth day. We want to make it as short as possible but as reasonable as possible to give people time to get notified to come to court. I changed it to calendar days because that is what all of our civil procedural rules are changing to. The Nevada Rules of Civil Procedure have done away completely with the judicial day count. It added a lot of confusion for a lot of courts because it was judicial days if it was less than ten and calendar days if it was eleven or more. They have scrapped that and completely moved to only calendar days, so my attempt was to try to keep it consistent with what was already there for working days. It also maintains some consistency throughout the state because we all have different judicial days. In fact, with COVID-19 this year, while the Las Vegas Justice Court had five judicial working days in a week, we converted to the four and we may be moving back to five. That remains to be seen but that was a cost-saving measure, so we want to keep it consistent regardless of what happens with judicial days. Also, it makes it easier for our case management systems to auto-calculate those days and avoid any human error in those calculations.

Moving on to subsection 5, this paragraph makes minor amendments to the existing statute to bring it in line with the nature of this type of case. In reality, it is what we would call "declaratory relief." It is asking the court to make a declaration as to whether the vehicle was lawfully or unlawfully towed or immobilized. Then it gives what happens, based upon the court's determination. One of the things that I noticed in the original statute was that it reads that if the court finds that the vehicle was lawfully towed, then the court shall order the vehicle owner to pay the cost of towing and storage. That is a little misleading because we do not really order the vehicle owner to pay that money. It is not a money judgment where we are giving the tow company a judgment. The tow company is not even a party to this case, so we cannot issue a judgment in favor of a nonparty. But also, it really is not an order for the vehicle owner to pay; it is a determination that, in order for the tow company to release the vehicle, they have to be paid first. But the vehicle owner gets that choice. They do not have to pay. They might determine on their own to forgo that payment and allow the storage company to recover their costs through other lawful means. They may decide that the vehicle's value is not as much as the storage and towing costs, so they have to make that determination on their own. I have changed the language to bring it in line to that declaratory relief, and now it simply would state that the court would enter an order declaring the owner liable for those costs but not necessarily a money judgment and order to pay.

Finally, subsection 6: one area that is commonly reported to me, and this is from the tow companies that regularly appear before me, is that if they are not in court and they do not know what happens in the courtroom and the vehicle owner just comes to them with an order, they do not have any way to look at our docket to see if it is a valid order. They have expressed to me through our conversations in discussing this bill that they would request that the court provide a certified copy to the vehicle owner. That way the vehicle owner brings a certified copy to the tow company, so the tow company has some assurance that they are following the court's directive and that it is a valid court order. With that, I am happy to answer any questions.

Chairman Yeager:
We will have some questions from members as well, but I want to ask a few that I think will be easy questions to lay the groundwork for the issue we are dealing with. As you indicated, there are a number of different actions one might be able to bring to recover money damages for an unlawful towing, but this is an action for expedited relief. I wondered if you could give us an idea of how many of these you see in Las Vegas Justice Court. Do you see a lot of these expedited cases being filed down in Las Vegas Justice Court? And are you able to give any sense of the kind of numbers we are looking at in normal years on an annual basis?

Judge Saragosa:
I can give you some anecdotal information, or my observations, but no hard numbers because I believe this type of case is coded differently, though I may be speaking out of turn. If I can provide you with an actual number, I will. I will ask my staff to see if they can extract that data from our case management system. But I can tell you that they are fairly regular. They are not the bulk of our caseload for sure. When I had an all civil caseload, and we have two judges hearing all of our civil cases in Las Vegas Justice Court, I would say that I would see, on average, maybe one a week, two a week with the other department. If that holds true, you are talking maybe a hundred a year.

Chairman Yeager:
In your experience handling these kinds of cases, are the plaintiffs typically represented by counsel or are these things that they tend to file on their own?

Judge Saragosa:
It is always on their own. I do not think I have ever seen one with counsel. They are always pro per litigants.

Chairman Yeager:
We are making some pretty substantial changes. In terms of the 21-day requirement, of who has to be served, of the seven calendar days versus four working days, is the court involved in any way in letting potential plaintiffs know about these changes? Is that something that the self-help center would be able to inform them? I am just wondering about how folks will know that we are potentially changing the law if they are perhaps used to how it used to read.

Judge Saragosa:
The Civil Law Self-Help Center is always involved in all of our case types. We do have forms that are provided. They do their best, honestly. On the form we provide instructions. We try to give them guidance through all of those means, whether it is the Self-Help Center, through email, through telephone calls, and through virtual sessions with individuals with questions. We are usually heavily involved. Because these are done on a court form, and I do not know if they would require any changes to the current nature of the form, but if it did, the Self-Help Center would work with us to make those changes and make those readily available through their website. And the court's website has links to our Civil Law Self-Help Center. We want to make sure that we never have conflicting information. What we do as the court working with the Self-Help Center is that we verify that the information that they

have on their website is accurate. Then we provide a link to that so that they can come to either place to get that information.

Chairman Yeager:
I have a few questions from members so far.

Assemblywoman Kasama:
I have a sense that the seven calendar days might still be a little bit tight. Perhaps, since we are changing the statutes anyway, maybe ten calendar days should be considered to make it as reasonable as possible for the court.

Judge Saragosa:
It is not uncommon with the four judicial days now that we get to that hearing and the plaintiff vehicle owner has not had the opportunity to get the other side served. That is a very common scenario. It is a tight window. I think those are policy issues that this Committee can discuss and address with the number of days. Anything closer than four, I think, would be impossible to give notice. It is just really quick. The only time that the seven calendar days might be tight would be on a holiday weekend or something like that, where the process servers' and constables' offices are closed. It makes that window a little tighter, but I think those are all considerations for this Committee, and I would just offer my information and let you all make the policy.

Assemblywoman Kasama:
I might suggest that we do ten days. Under section 1, subsection 1, paragraph (c), I believe, where it says, "the cost of towing and storing the vehicle does not exceed $15,000." I am curious where that number comes from, and if we set an amount in statute, does that need to be changed ten years down the road? How is that number arrived at?

Judge Saragosa:
That number is derived from NRS 4.370, which is the limited jurisdictional limit. That $15,000 amount is our jurisdictional limit. I guess in this case, it always tracked that amount, rather than the value of the vehicle, it tracked the amount of towing and storage costs to keep in line with that. I would note that in section 1, subsection 1 paragraph (c), I think the part that says "For a vehicle that was towed" should be stricken and it should just read "the cost of towing and storing does not exceed $15,000." I think that is probably just an oversight, but that is how it is derived now.

Assemblyman Miller:
Just so that I am clear, what we are looking to do with this bill is to remove the tow operators from the initial complaint that is filed and put that totally on the owners of the property. Is that correct?

Judge Saragosa:
Currently, the way the statute reads, the tow company is not the proper defendant and they never have been. My attempt in this bill is to make that even clearer. The current language

is always the owner of the property from which the vehicle was towed or immobilized. It is just not followed because it is confusing, and so I am trying to clarify that. The tow company has never been the proper defendant and in regular course, when the tow company is named, we always have to continue the case, amend it, re-serve the right person, and now four or five more days have gone by and the vehicle owner suffers additional storage cost. So I am trying to make it as clear as possible to give that expedited relief to the vehicle owner, when it is appropriate, as quickly as possible. So I am not changing it, I am just trying to make it more obvious.

Assemblyman Miller:
With that in mind, I can imagine when vehicles are towed and a person goes to acquire their vehicle, they are not necessarily being told of the quick remedy process in the event they believe their vehicle was unlawfully towed. If, in fact, the vehicle was unlawfully towed, and I am asking for your clarification on this, would that not also make the tow company responsible for acting on behalf of the owner in an unlawful act?

Judge Saragosa:
In terms of if they are being told of the information, currently existing in the statute and unamended by this bill is subsection 7, and that is that the storage and towing facilities are required to conspicuously display all of the information that is in this statute. Whether that is being done, I could not say. I have not had the opportunity to go and inspect to see that that is there. I trust that it should be. But that is a mandate that is already in the statute and is unaffected by this bill, other than that they would have to amend their signage to comply with any amendment should this bill pass.

The second part of that question was in terms of who is responsible. That is part of what is not covered in this bill. For example, if the vehicle was unlawfully towed and the court finds that it was unlawfully towed, then the order from the court would be to that tow company that they must immediately release that vehicle to the vehicle owner, regardless of who is responsible for the storage and tow costs. It makes the property owner who directed that tow liable. In the other statutes, NRS 487.037 and 487.038, the tow company can be contracted with, let us say, an apartment complex for example. The tow company has a contract with an apartment complex, and they might be enforcing the apartment complex's rules and regulations regarding towing. So there is a relationship there, but the court is not getting involved in that contractual relationship at all in this kind of a case. We are not making a determination as to who is responsible for any money damages, we are simply directing the tow company, if it was unlawfully towed, to release the vehicle immediately. That is the determination that we are making. Then the liability for the cost falls on the property owner who contracted with an agent, a tow company, to tow the vehicle. So there is a principal/agent relationship there.

Assemblyman Miller:
I understand that we are looking to expand that time frame, but if the person whose car was towed comes to the court and names the tow company, and you say, No, it is actually the owner, so are we able to allow the tow company to be incorporated in that since they already

have a contractual relationship wherein they are acting on behalf of the owner when they tow the car? Could the tow company be served on behalf of the owner in the sense that it would actually result in an expedited recovery of the vehicle rather than a longer process? My point is that if it is supposed to be expedited, and someone's main vehicle has been towed unlawfully, they may not have three, seven, or even ten days to acquire it back. If it has been towed unlawfully, it could totally disrupt their lives. I guess I am trying to figure out if there is another path where we can actually speed up the process rather than it resulting in more stays or an extended time for people to recover their vehicles.

Judge Saragosa:
The tow company would not be in a position unless there was some authorization to represent a totally different entity in the hearing. They cannot practice law. The bottom line is that they are not lawyers and they cannot practice law. They are pro per litigants, on their own, that come into court and represent their own business. But that is the extent of what they are generally authorized to do. This particular bill does not really address that. Comparing that with our small claims statutes, our small claims statutes have a specific provision for an entity to be represented by one of its officers or directors. This section does not have that. Yet I will tell you that we never have lawyers on either side, that is very uncommon. Instead, you have someone from a property management company who is in a similar position, where they are not the property owner, but they might be named as the defendant and they are just a management company. But they are an agent for the owner of the property. The tow company is in a similar position. If there was some authorization for the tow company, who is the person most knowledgeable, to be served and come in on behalf of the property owner, I think that would be a decision that this Committee could make. From my perspective of the court, I do not have any real issue with that. What I want is the facts. I want to know what happened. I want to know why the vehicle was towed, whether it was stickered, when the vehicle was towed, and who authorized the tow. Those are my questions in the court hearing and, in general, you are correct that the tow company has that information. Yet, the way the statutes are written currently in NRS 487.037 and 487.038, the tow company is not the person authorized to make that determination. It is the property owner who has to direct and authorize the tow.

I would be willing to communicate further with this Committee on anything that you would like to see, if you want to massage some language that you think would accomplish something being done quicker and easier. That was my goal; to make it really clear in the statute. And then, maybe that conspicuous signage would make that clear because it is confusing for the vehicle owner. They may think, My car was towed and I want to sue the tow company. That is what they think. I am trying to clarify that.

Assemblywoman Cohen:
My question is about subsection 6. I appreciate that the tow company is in a bit of a bind because someone is coming in and saying, I have an order. But they are not presenting a certified order. That section struck my interest because I think back over the last several months and, as an attorney and in communication with other attorneys, we were having trouble getting certified copies—not from the justice court, from the district court—but we

have pro per litigants who may or may not have other transportation and now we are asking them to get a certified copy, which can be difficult at times. Is there anything we can do to make that process easier for them? Are they able to leave the courtroom with an order that they can then walk to the clerk's office to get certified? And if so, are they made aware of that? Can you give me more information about the way pro per litigants in the Las Vegas Justice Court get certified copies?

Judge Saragosa:
You are 100 percent right. COVID-19 times are different than regular times and it has been more challenging in the Eighth Judicial District Court. Obviously, the Justice Court is more of the people's court. We have many litigants who are pro per, they are representing themselves, and they do not have the technological means to do a virtual hearing so almost all of these cases, even though we offer virtual sessions, are happening in person. And yes, they could leave the Las Vegas Justice Court and we hand them a regular copy. But they walk out with an order. We have an order, kind of a form order, that I would check the box, fill out the information, determine the cost of towing and storage, and I just handwrite it in on the bench. It is very easy, they walk out within five minutes of the hearing with a copy, and they could easily walk out with a certified copy from my court. I cannot speak for other courts in the state, but I can say in my conversations about this bill with the Nevada Judges of Limited Jurisdiction that most of our other jurisdictions do not see many of these cases, given the volume of our cases in Las Vegas Justice Court. We see the majority of them. So I cannot speak for others, but we would hand it right to them in court. If they are making a virtual appearance, that might be more difficult. We may have to come up with a different resolution where we can electronically certify it; I believe we have that capability here. And then we can electronically send it to them so that they have it.

Chairman Yeager:
Are there other questions for Judge Saragosa from Committee members? [There were none.] Judge, I have a question to get your legislative intent on the record. If we look at page 2 of the bill, if you go down to line 26 which references that the filing must be within 21 days, I wanted to ask if you wanted that to be judicial or calendar days? Because I think the absence of the word "calendar" means that it would be judicial.

Judge Saragosa:
I do not know that it would by absence mean judicial, because the court rules say that anything under ten is judicial and over ten is calendar. It would be my intent to be calendar days. As I said, that 21 number was selected to ensure that the expedited remedies that were available would still be available by the time we set a hearing on it, whether that be 28 days, 30 days, 18 days, or whatever this Committee thought. The number of days is less significant for the court than that there has to be some limit. Because if we have these cases get filed and rush to set a hearing, and yet the vehicle was towed four months ago, which is something I see, then that vehicle is long gone and I cannot provide them the relief that they are seeking in this expedited fashion. They always have the right to go with a civil remedy, but it would be my intent to be calendar days. I think that is the direction in which the state is moving; to increase the number of days and make it calendar rather than judicial days.

Then the court rules would say that it is always extended to the next business day if it falls on a Sunday or a weekend or a holiday.

Chairman Yeager:
I will make a note of that. If we do end up amending this bill in some fashion, I think we can just put "calendar" in there to clarify any potential confusion. Last call for questions for Judge Saragosa. [There were none.] I want to thank the judge for presenting. I ask you to sit tight while we take testimony and we will come back to you for concluding remarks. At this time, I am going to open up for testimony in support of Assembly Bill 32. We do have Mr. Segura on Zoom with us. He was having some technical difficulties, so I believe he is on the phone, but he is in the Zoom room, so please go ahead.

Robert Segura, Private Citizen, Las Vegas, Nevada:
I represent the towing industry. I am a general manager and partner in three non-consent tow companies in southern Nevada. I have a couple of points. I am in complete support of Judge Saragosa's proposal. The 21-day scenario definitely works in the standard process of lien processing where we obtain ownership of a vehicle in order to recoup fees or to have an exit strategy on the vehicles that are towed. That standard process is a 45- to 75-day window, hypothetically. So the 21-day limit fits perfectly in our scenario versus now, where it is based on when people make a decision to file or not file. In terms of the cost, the time, the money, and the repeat visits, it is unfair to the holding party as far as the tow car operator, as well as the defendant and the plaintiff, because nothing is going to be resolved until all parties are present and the judge has the ability to hear all evidence and to make a fair and equitable ruling for both parties that are involved, whether it be the owner/agent of the property or the plaintiff. Judge Saragosa spoke very directly and correctly in terms of the process. We are dismissed from all cases as defendants generally within the first five to seven minutes.

The question was asked by Chairman Yeager as far as numbers. Ninety-nine percent of the cases are pro per capacity. Very rarely will you see an attorney involved for either party. I personally represented 57 cases in 2019. In 2020, I represented 39 cases and that was shortened because of COVID-19. And thus far in 2021, I have been at seven cases and have one more tomorrow, so that will put me at eight. That gives you an idea of what we are looking at. My companies account for 40 percent of no-consent tows in the southern Nevada region.

Assemblyman Miller also brought up a question as far as the language on the bottom of all of our invoices as required by the Nevada Transportation Authority, which is the actual body that regulates our efforts. It is stated on every invoice that we produce that if someone has any questions concerning the services provided or if they wish to file a commendation or complaint, they may contact the Nevada Transportation Authority through their phone number or website which is listed. As Judge Saragosa alluded to, conspicuously posted and also available with our tariff rates, as a requirement to do business as a tow car operator, are remedies and other avenues in terms of taking it to court or providing some sort of civil matter in regards to that situation. We try to educate the public one customer at a time to

what the best-case scenario is. We recommend that they get their vehicle out immediately to minimize the cost and the effect on them financially. And if they are not satisfied with the explanation then they can take it to court. They have remedies with the Transportation Authority. We try to provide them the avenues because it is inevitable that it is going to take place.

I cannot speak for all tow car operators; I can only speak for my companies. I have been in the business for 34 years, so it is something that I have dictated and have spoken about with other tow car operators. All the things that have been mentioned and proposed with A.B. 32 are definitely items that tow companies would be in support of because it saves time and effort and allows things to be heard quickly. With all the different restrictions and caveats involved, especially now with COVID-19, this ability to attain resolution is a lot easier to knock it all out in one fell swoop. I can speak for us specifically in that we would not be averse to being named in a case, and not being liable, and being required to attend the court cases, because as Judge Saragosa pointed out, we have the majority of the information, evidence, and documentation that would be required for a fair judgment to be made.

Chairman Yeager:
At this time, seeing no additional comments from folks on the Zoom, I would like to go to the phone line to see if there are individuals there who would like to testify in support.

Sophia Romero, Attorney, Legal Aid Center of Southern Nevada:
Assembly Bill 32 solves several problems that we see on a regular basis. As such, we are in support of this proposed statute. As far as we are concerned, the seven days as the time frame for a hearing strikes a good balance. You have to remember that these people are up against the clock. They are trying to prevent their vehicles from being towed and sold, so the faster we can get a hearing that we do not have to continue because there was not enough time to get someone served is better for the owners of the vehicle. We think that the seven days does strike a good balance with that. I think that was absolutely correct; that is enough time to get somebody served but is still a quick enough turnaround time for a hearing in order to help people get their vehicles back more quickly. We also agree that the entity who is the proper defendant has been laid out in the statute correctly. It is the owner of the property who authorized the tow who would be the proper defendant according to statute. They have the information on what was the cause of the tow and why the tow company was called out to go and tow that vehicle. As far as everything else, we are fully in support.

Chairman Yeager:
Let us go to the next caller, please.

Paul J. Enos, Chief Executive Officer, Nevada Trucking Association:
We have a little over three dozen tow car members, and we are here today to speak in support of A.B. 32. Right now, the current process to file a complaint against a towing company is based on the Nevada Transportation Authority. They only regulate the tow operator. They do not regulate the owner of the property who requested that tow. I will say in looking at the bill, it does mandate that you file against both the owner of the property and the tow

company that towed the vehicle. It is not like the tow companies are not going to be a party to these suits. We do think there is a value in having the justice court bring a quicker resolution to the process by having all parties involved in the tow. We are supporting A.B. 32.

Chairman Yeager:
Is there anybody else in support?

Maggie O'Flaherty, representing Tow Operators of Northern Nevada:
The Tow Operators of Northern Nevada is in support of A.B. 32. This bill provides for the inclusion of all relevant parties including the property owner or their authorized agent to be involved in the actions regarding the lawfulness of vehicles towed in justice court. In having the property owner be a party to these proceedings is critical on our end because, as Judge Saragosa indicated, in most cases the tow operator is acting on behalf of the property owner and only has access to certain facts and sometimes history regarding the tow, that the tow operator themselves may not otherwise have. Given this, their inclusion in the proceedings will help minimize room for error and help ensure proper outcomes come out of the court.

Chairman Yeager:
Is there anybody else in support? [There was no one.] I will now close supportive testimony and open opposition testimony. There is no one on Zoom in opposition. Can we check the phones to see if there is anyone there in opposition? [There was no one.] I will close opposition testimony. I will now open neutral testimony. There is not anyone on Zoom in neutral. Can we check the phone to see if there is somebody there? [There was no one.] I will close neutral testimony, and at this time, I will hand it back to Judge Saragosa for any concluding remarks on Assembly Bill 32.

Judge Saragosa:
I did realize as I was listening to the others talking that I may have confused something. This might help in response to Assemblyman Miller's concerns as well. Currently, even though it is not in the statute, the litigants oftentimes only name the tow company. And what we end up doing, as Mr. Segura stated, is dismissing them from the case because they are not the proper party. We then require that the property owner be brought in. What I was trying to do in subsection 2 of this bill was identify the proper defendants, but it was made clear that what we want is all the proper parties brought, not just the property owner. We want them to continue to name the tow company as a relevant party, and as the most knowledgeable person to be in court and be served. If you read in subsection 2, paragraph (b), subparagraphs (1) and (2), it must be filed against the owner of the real property and the tow company that towed the vehicle. So the tow company would naturally be a part of that process. Then when you look at subsection 4, then a person identified in those subparagraphs would have to be served. Both entities would be served, and we could hopefully get everyone together at the right time.

The other important aspect of that is that without the tow company involved at all, we would not have the facts we need in the court to make a determination. Also, because this is in the nature of a declaratory relief issue and we are going to be entering an order potentially for a tow company to immediately release the vehicle to a litigant—under whatever circumstance—we are now issuing a court order, in the way of an injunction almost, against a tow company. If they are not named in the complaint from that beginning point, it makes for a very awkward situation. The court would be put in a position to enter an order against a nonparty without giving them an opportunity to be heard. That would be a due process violation. I hope I did not confuse things too much in my initial testimony. I can see Assemblyman Miller is reacting in a manner that I probably did confuse things. I hope that clarified it in that it was the effort to bring everybody together.

Chairman Yeager:
I will close the hearing on A.B. 32. That will take us to our final item on the agenda, which is public comment. We reserve 30 minutes for public comment after each meeting. Callers will have up to two minutes to provide public comment. Public comment is a time for matters of a general nature that fall within the jurisdiction of the Assembly Judiciary Committee. It is not a time to rehash hearings of bills we have already heard or that we may hear in the future. Can we go to the public comment line and see if there is anyone there who would like to give public comment this morning?

It seems Ms. Brown is having difficulties. Is there anybody else on the public comment line?

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
My brother Thomas Purdy was killed by Reno police and the Washoe County Sheriff's Office on October 8, 2015, during a mental health crisis. Today I would like to read you a letter from the mother of 25-year-old Jorge Antonio Gomez who was killed by Las Vegas Metropolitan Police Department while he was out protesting for families like mine and families like George Floyd's who have lost a loved one to the police, and sadly he became a victim.

> My son was killed by the Las Vegas Metropolitan Police Department on June 1, 2020. He was on his way to his car to pick up his dad from work, which was around the corner from the federal building. He was walking on a public sidewalk and police officers began to speak with him, and so he slowed down. One officer then came down on him and shot at him with low, lethal rounds. He ran, and four other officers who saw him running shot him 19 times. These are the facts. The police changed their story multiple times as to why there were no body cameras and that the officers are not required to have them due to budgeting issues or their job title. Nevada law requires them, period. Over 30 cameras in the area and the Las Vegas Metropolitan Police Department refused to release the videos.
>
> Jorge Antonio was a kind young man who felt the injustice as we all do, and who wanted to be there in support of the Black Lives Matter movement and to

> exercise his First and Second Amendment rights. He was never aggressive and was seen on various videos peacefully protesting. Not that it matters, but he had no criminal history. We/he are not anti-police. We/he are anti-corrupt cops and those who aid them. We are a military, canine officer, homeland security family. What we will not accept is this ridiculous betrayal of a great human being that the world lost on June 1, 2020. Jorge Antonio was a kind soul. He loved animals, he helped the homeless, he loved music and our Earth, he cared for everything, and he just wanted to make it a better and safer place to live. We will not rest until we find the whole truth. No justice, no peace.

Chairman Yeager:
Is there anybody else on the line for public comment? [There was no one.] I will close public comment.

Is there anything else from Committee members this morning before we talk about the rest of the week? [There was nothing.] I appreciate your time and attention. In terms of the rest of the week, tomorrow we have one bill. We are going to start at 8 a.m. because that bill may take us a while. We do have an agenda out for Thursday that was posted while we were in this meeting. We have two bills scheduled for Thursday. That will be an 8 a.m. start. Friday we are looking at doing a work session. I am not sure about bills. We are going to see what we get on the floor today. We are going to have a meeting Friday; we just do not know what is going to be on the agenda. I do not have any information about next week. Hopefully, we will know by the end of this week. With that behind us, thank you all. This meeting is adjourned [at 10:52 a.m.].

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 a copy of a PowerPoint presentation titled "Miranda Warnings for Youth and Young Adults," submitted by Assemblyman Edgar Flores, Assembly District No. 28.

Exhibit D is a proposed conceptual amendment to Assembly Bill 132, dated March 9, 2021, submitted by Assemblyman Edgar Flores, Assembly District No. 28.

Exhibit E is a letter, dated March 5, 2021, submitted by Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association, in opposition to Assembly Bill 132.

Exhibit F is a letter, dated March 9, 2021, submitted by Marc Picker, Nevada Attorneys for Criminal Justice Legislative Committee, in support of Assembly Bill 132.

Exhibit G is a written statement submitted by Zachary Kenney-Santiwan, Private Citizen, Las Vegas, Nevada, in support of Assembly Bill 132.