MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-First Session
March 11, 2021

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:05 a.m. on Thursday, March 11, 2021, Online. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/81st2021.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

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

Traci Dory, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Michael Morton, Senior Research Specialist, Nevada Gaming Control Board
Denise F. Quirk, Vice Chair, Advisory Committee on Problem Gambling, Department of Health and Human Services
Fred Wagar, Deputy Director, Programs and Services, Department of Veterans Services
Jensie Anderson, Legal Director, Rocky Mountain Innocence Center, Salt Lake City, Utah
Nathaniel Erb, State Policy Advocate, Innocence Project
Tonja Brown, Private Citizen, Carson City, Nevada
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Diane Goldstein, Executive Director, Law Enforcement Action Partnership
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Nicholas Shepack, Program and Policy Associate, American Civil Liberties Union of Nevada
Jim Sullivan, representing Culinary Workers Union Local 226
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Annemarie Grant, Private Citizen, Quincy, Massachusetts
Jim Hoffman, representing Nevada Attorneys for Criminal Justice
Jennifer P. Noble, Chief Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Ronald P. Dreher, Private Citizen, Reno, Nevada
Steve Grammas, President, Las Vegas Police Protective Association
A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Benjamin Challinor, Policy Director, Faith in Action Nevada

Chairman Yeager:
[Roll was called. Committee protocol was explained.] We have two bills on the agenda this morning and we will be taking them in reverse order. I will be presenting the first bill.

[Assemblywoman Nguyen assumed the Chair.]

Vice Chairwoman Nguyen:
I will open the hearing on Assembly Bill 202.

Assembly Bill 202: Revises provisions relating to charitable lotteries and charitable games. (BDR 41-581)

Assemblyman Steve Yeager, Assembly District No. 9:
Assembly Bill 202 revises provisions relating to charitable lotteries and charitable games. I have Mr. Michael Morton of the Nevada Gaming Control Board with me to answer any technical questions the Committee may have.

Assembly Bill 202 is not overly complicated; it simply caps the annual fees at $10 that a qualified organization must pay to conduct charitable gaming if the total value of the prizes offered by the organization in one calendar year does not exceed $100,000. You will find that language in section 1, subsection 3, of the bill. That is the only addition we are making to the statute. It would become effective upon passage and approval.

The intent of this bill is to ensure that the qualified organization is able to keep more of the money it collects to fund its activities and also to cut some of the red tape associated with charitable gaming.

Assembly Bill 117 of the 80th Session, which was an Assembly Committee on Judiciary bill, made some changes to our charitable gaming statute. One of those changes was to remove the charitable gaming fee structure that was in statute and allow the Nevada Gaming Control Board to enact regulations setting the fee structure. The Gaming Control Board did just that in October 2019 by revising and adopting Regulation 4A of their Regulations of the Nevada Gaming Commission and Nevada Gaming Control Board, essentially enacting a fee of $25 for each event or day that an event was offered or for each tournament conducted. Although under that regulation, the chair of the Gaming Control Board has discretion to waive all or part of that fee, and the chair did in fact do so on several occasions since the regulation was adopted.

I began to hear from smaller charitable organizations that the fee structure adopted resulted in higher fees than they had previously had to pay or that they had to spend more work putting fee waiver requests in to the Gaming Control Board. Then COVID-19 hit and most of these charitable events simply did not happen any longer. I took that time to think a little bit more about the legislation we passed in 2019 and thought it made sense statutorily to limit those fees for smaller organizations so they do not have to go through the fee waiver request process and they can keep more of the funds raised. It also saves the Gaming Control Board some time in having to review and approve fee waivers.

That is simply what A.B. 202 does, and I am happy to answer any questions. As I noted, Mr. Morton could answer questions if Committee members have questions about how this really works on a day-to-day basis.

Vice Chairwoman Nguyen:
I appreciate your bringing this legislation. This is one of those things that comes up all the time in questions I receive from church organizations and other small nonprofits about lotteries and raffles. Are there any questions from the Committee?

Assemblyman Wheeler:
As I read this, I see it apparently pertains only to charitable organizations. Is that something that only applies to an organization with an Internal Revenue Code Section 501(c)(3) designation?

Assemblyman Yeager:
I am going to hand it over to Mr. Morton to answer that. I did want to note for the Committee that in the Legislative Counsel's Digest of the bill, the definition of a "qualified organization" is provided as an alumni, charitable, civic, educational, fraternal, patriotic, religious, or veterans' organization; or a state or local bar association that does not operate for profit. I would like Mr. Morton to talk about the kinds of organizations that they actually see conducting these events.

Michael Morton, Senior Research Specialist, Nevada Gaming Control Board:
A "qualified organization" is defined in *Nevada Revised Statutes* (NRS) 462.125, and yes, a qualified organization does have to be a company that operates as a not-for-profit. They have to provide us with their nonprofit letter of their 501(c)(3) status on either the federal or state level.

Assemblyman Wheeler:
I did read the digest, but I was actually setting you up because what I am not seeing here are different types of organizations like women's clubs or political clubs. While this bill does not cover it, we are in luck because I have a bill coming up that will.

Vice Chairwoman Nguyen:
Are there any other questions from the Committee?

Assemblywoman Bilbray-Axelrod:
You are changing it to not to exceed $10 for not more than $100,000, but does it go back to the regular fee structure when it goes above that amount? How would the fee structure work for something like a 50-50 raffle where the prize money gets larger as more people buy tickets? A personal example was the prize money at the Las Vegas Motor Speedway a couple of weeks ago. It started at $60,000 as the raffle began but grew to $160,000 by the time it was awarded.

Michael Morton:
As to your first question, yes. The Gaming Control Board and the Nevada Gaming Commission will have to amend our regulations if this bill were to become law. The plan is that once the $100,000 threshold is reached on an annual prize value, it would revert to the

existing fee structure, including the existing fee waiver provisions that are currently in Regulation 4A of the Nevada Gaming Commission regulations.

As to the second part of your question, when an organization applies to become a qualified organization, they might not be quite sure what that prize limit is. We work with them to pay what they would have to pay no matter what up front, and if the prize value goes beyond the requisite amount—or for events that host those 50-50 or, for example, 51-49 raffles at Vegas Golden Knights games—they have a historical perspective on how much money they will raise. We have that historical perspective, too, if they have applied to be a qualified organization before.

Vice Chairwoman Nguyen:
What do other states that do not have gaming control boards in this area do?

Michael Morton:
The best example is something that Nevada does not have, a state lottery. A lot of states that have state lottery commissions or departments of lotteries run their regulatory authority over charitable raffles or charitable lotteries through their state lottery organizations.

Vice Chairwoman Nguyen:
I know the Vegas Golden Knights were heavily involved in the 2019 legislation that led to this. Were there other organizations throughout the state that also took an interest in clarifying some of this language?

Assemblyman Yeager:
One of the reasons we enacted some of the changes in 2019 was as a result of professional sports teams that arrived in southern Nevada—Vegas Golden Knights and the Las Vegas Raiders—who were doing charitable gaming on a scale we had not seen before. We put some of those provisions in, and I think that was one of the focuses of the bill. After session and after the regulation was enacted in October, I began to get some communications from some smaller charitable organizations. To be honest, most of them were up here in northern Nevada. I know Assemblyman Wheeler, Senator Settelmeyer, and Assemblywoman Krasner also received those communications. These were some organizations that were operating on a pretty small scale, and they were confused about why we changed the rules on them. I think in consultation with some of my legislative colleagues, including Assemblywoman Carlton who also heard about some issues from smaller groups, I took some time to think about it and thought that this was the right way to go. We still maintain that the bigger players in the space are going to have to pay more fees; organizations like the Vegas Golden Knights that routinely generate over $100,000 in their 51-49 raffles will pay a little bit more. But we wanted to make sure the smaller organizations, such as veterans' groups that do bingos or raffle events at some of the civic groups in the northern part of Nevada, we thought this was a good way to protect them and make sure that more of the funds can stay with the group and they can continue to do some of the really great work in their communities.

I want to thank my legislative colleagues who heard the call for change and reached out. Hopefully, everyone will be able to support this concept, and I think it strikes the right balance.

Vice Chairwoman Nguyen:
Are there any other questions from the Committee?

Assemblywoman Krasner:
I just want to clarify because I have received several phone calls, emails, and complaints from some of those smaller groups. Once a month, a women's group does a 50-50 raffle where they might make $100, or they might have a little auction for a vase of flowers that is worth $20. How do I respond to them now with this bill? Please tell me what I should say to them. Are they only going to pay $10 for the year but they still have to file with the Gaming Control Board? What is my correct response for those groups, or are those groups even covered?

Michael Morton:
In order to hold a charitable lottery or a charitable game event, statute now and has always said that you must be a qualified organization. A qualified organization is an entity that operates not for profit, for a charitable purpose. The first hurdle is being a 501(c)(3) organization. If we are talking about an organization that is a 501(c)(3), they would have to file an application with the Gaming Control Board. If this bill were to become law, they would file an application with the Gaming Control Board, provide all their contact information, the type of charitable lottery or charitable game they are going to hold, confirm the prize value with us, and they would pay the $10 fee for the entire year if this bill were to become law. I am happy to send you the link to the application so that you can share it with your constituents. The application may change a little if this bill were to pass, but the location of the application and the link will stay the same.

Assemblywoman Krasner:
What if they are not a 501(c)(3) organization? What if they are just a small organization, such as some kids in the neighborhood or a women's club? Are they going to be violating the law if they have a raffle or play bingo?

Michael Morton:
Under existing state statute and if this bill were to pass, charitable lotteries and charitable games cannot be conducted unless you are a 501(c)(3) organization.

Assemblyman Orentlicher:
I support the idea of limiting how much these smaller organizations pay. I am a little nervous about putting in statutory amounts because that just means in a few years, when they become outdated, we will have to amend this. I am curious why the Gaming Commission and the Gaming Control Board were not more responsive to these concerns, because they obviously have authority to change the regulations, and why the regulatory process did not work to get us to the right point.

Michael Morton:
After A.B. 117 of the 80th Session passed, we started the regulatory process at the Board and Commission. When NRS Chapter 462 was implemented in 1993, the fees were statutorily set at $5 and $25 based on—to make it simple—prize value. For most people, the fee was $5. That fee stayed in existence from 1993 until 2019. When A.B. 117 of the 80th Session passed, based on the amounts of applications that we receive every year, the amount of complaints that we get every year at the Board from people who complain that they have somehow been cheated out of winning at a charitable lottery or a charitable game held by a qualified organization, we raised the fee to $25 in regulation. We held multiple workshops and hearings on these regulations, and then after they were passed, the Board and Commission did not receive many complaints about the fees. We received more concerns about the confusion on how to apply, and we worked with every qualified organization on how to do that.

The way the fee waiver process worked for some organizations—for example, a Knights of Columbus that might hold a weekly bingo where it is the same type of event every two weeks—the fee waiver process allowed them to submit one application for the entire year or for half of a year and just pay that one $25 fee. The regulatory process worked from the Board and Commission's point of view, and the Board and Commission will absolutely and obviously follow whatever gets put into state statute regarding charitable gaming and charitable lotteries.

Assemblyman Wheeler:
I am seeing which organizations are included and which ones are excluded. I am wondering why we are not including non-501(c)(3) organizations, like women's clubs or small neighborhood organizations that would be violating the law if they held some kind of small raffle. But by the same token, we have a lot of members of the State Bar on this Committee, and the bar association is on here. It is escaping me why we are not broadening this out to let in some of these smaller organizations.

When we did this in 2019, everyone agreed that we messed up by including this huge umbrella and did not think about it. We were going to come back in this session and fix it. As I said, I do have a bill on that. But it is escaping me why we are not including some of these smaller clubs that are not organized as a 501(c)(3) and basically do not have the money to go out and organize as a 501(c)(3) because that usually takes an attorney to accomplish that.

Assemblyman Yeager:
I do believe the bar associations in the state are 501(c)(3) organizations. I think that might answer that question. I guess what I would say is I wanted the bill to remain very simple and just deal with the fees. I think you bring up an interesting point that perhaps could be a discussion for another day. I do not know the history of why the organizations were chosen the way they are. My guess is that when this was put into statute, there was a focus on the nonprofit organizations, to say they should essentially be allowed to run these small games. I am not necessarily opposed to looking at that; I just would prefer not to do it in the context

of A.B. 202. I have received some other requests for amendments and I would love to see the bill just go through to address the fee issue, and perhaps we can address the other issues if need be in other legislation, perhaps including yours, Assemblyman Wheeler. It sounds like you have a piece of legislation on that topic.

Assemblyman Wheeler:
I believe three of us do. Thank you and we can talk offline.

Vice Chairwoman Nguyen:
Are there any other questions from the Committee? [There were none.] Is there anyone who would like to testify in support? [There was no one.] It seems that there were problems with the caller wishing to speak in support. Please submit any comments in writing within 48 hours of close of the hearing.

Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position?

Denise F. Quirk, Vice Chair, Advisory Committee on Problem Gambling, Department of Health and Human Services:
I am honored to be the elected voice of the Governor's Advisory Committee on Problem Gambling (ACPG) here with our message regarding legislation involving Nevadans under the age of 18 participating in any gambling activity, including charitable games or lotteries. The ACPG strongly endorses maintaining a minimum age for any gambling activity. There should be no distinction between cash or merchandise as prizes and no exception to the minimum age that is there to prevent risk to young people. Science points to early exposure to gambling as one of the most significant factors increasing the risk of problems in later years. March is Problem Gambling Awareness Month, and we encourage everyone to read the Governor's proclamation and other useful information found on the Nevada Council on Problem Gambling's website. The theme this year is Awareness Plus Action, and we at the ACPG encourage learning what gambling is, what problem gambling is, and what is available for knowledge, prevention, and care for all Nevadans.

Vice Chairwoman Nguyen:
I am going to recategorize the testimony of Ms. Quirk to public comment. I do not think it necessarily has a neutral effect on the bill that we are currently hearing.

Fred Wagar, Deputy Director, Programs and Services, Department of Veterans Services:
As noted, A.B. 202 would impose annual fees for qualified organizations not to exceed $10 if the total value of the prizes offered by the qualified organization in the same calendar year is not more than $100,000. Each year prior to a legislative session, the Department of Veterans Services and the United Veterans Legislative Council host a Veterans Legislative Symposia to gather veterans together to obtain and prioritize concepts for legislation in Nevada. During the 2020 Veterans Legislative Symposia, an issue, while not in the top ten, was brought forth by the veterans which indicated the State of Nevada should change

NRS Chapter 462 and the Gaming Control Board Regulation 4A. The intent of this low-priority item was to reduce fees for local groups, including veterans organizations that raise money to support local veterans activities.

Vice Chairwoman Nguyen:
Is there anyone else who would like to testify in the neutral position? [There was no one.] I would invite the presenter back up for any concluding remarks.

Assemblyman Yeager:
I wanted to note that the caller in support who was having some technical difficulties had been communicating with me over the past few months. Her name is Lynne Ballatore, and I had worked with her on the concept of the bill. It will not surprise me if she provides something to the Committee in support of the bill. I wanted to acknowledge that she was on the phone.

I wanted to thank those who called in to talk about the problem gaming aspect. I always appreciate the work that they do. I had some communications about proposed amendments, but as I stated in response to Assemblyman Wheeler's question, my goal here is to keep this bill very simple. I think there certainly are other concepts that are worthy of consideration and discussion, but my preference would be not to do it in the context of A.B. 202. I think it is important that we get this bill through and make sure those fees are reduced and not have this bill held up with some of these other definitely more controversial propositions that have been brought up. I appreciate the time and questions, and hope to gain your support of Assembly Bill 202.

Vice Chairwoman Nguyen:
I will close the hearing on A.B. 202.

[Assemblyman Yeager reassumed the Chair.]

Chairman Yeager:
I will open the hearing on Assembly Bill 201. Assemblywoman González will be presenting the bill along with Ms. Jensie Anderson and Mr. Nathaniel Erb.

Assembly Bill 201: Revises provisions relating to informants. (BDR 14-777)

Assemblywoman Cecelia González, Assembly District No. 16:
As indicated, I have Jensie Anderson, Legal Director, Rocky Mountain Innocence Center, and Nathaniel Erb, State Policy Advocate, Innocence Project, with me here today to present Assembly Bill 201.

This body passed Assembly Bill 267 of the 80th Session, which compensated people who are wrongfully convicted. When DeMarlo Berry went to prison in 1994 for a murder he did not commit, it was a jailhouse informant who was an incriminating witness. Based on the

informant's testimony, Mr. Berry was convicted and sentenced to life in prison. In 2014, the informant admitted that he had lied and also received benefits for his false testimony.

Testimony from jailhouse informants is one of the leading contributors to wrongful convictions, playing a role in nearly 1 in 5 of the 367 DNA-based exoneration cases nationwide. What is an informant? An informant is an individual who provides testimony or information about statements the defendant made while they were incarcerated together. Informants often receive a benefit from prosecutors for information usually in the form of a plea bargain or a reduced sentence on their own criminal charge or a complete dismissal of their own case. Informants can also receive financial incentives or other special benefits for their testimony while in custody. At the very least, the use of jailhouse incentives is a distortion to our criminal justice system, and more important, the use of unregulated jailhouse informant testimonies sent innocent people to prison [Exhibit C].

Chairman Yeager, I am going to turn over the presentation to Ms. Anderson to provide more details on cases involving informants and how this bill safeguards against false informant testimony.

Jensie Anderson, Legal Director, Rocky Mountain Innocence Center, Salt Lake City, Utah:

We are based in Salt Lake City, Utah, but we cover the states of Utah, Wyoming, and Nevada. I am also a professor of law at the University of Utah, S.J. Quinney College of Law, where I supervise an innocence clinic where students learn how to do work for individuals who have been wrongfully convicted. I was asked to come here today to speak to you about the problem we are trying to address, and because I was deeply involved in the exoneration of Mr. Berry [Exhibit D].

Some of you may know Mr. Berry from the 80th Session when he testified before this Committee at that time. He could not be here today, but I was asked to share a little bit more about his story. In 1994 Mr. Berry was convicted of a murder that he did not commit. There was no physical evidence that connected Mr. Berry to the scene. There were 13 eyewitnesses and only 1 of them identified Mr. Berry in a photo lineup. While Mr. Berry was incarcerated in the Clark County Detention Center, he was put into a holding cell with an individual named Richard Iden. Mr. Iden was pulled out of that holding cell by police and prosecutors, and he told them that Mr. Berry had confessed his involvement in the murder. As a result, Mr. Iden, who had been extradited from Ohio to face multiple charges in Clark County and Washoe County, was given really remarkable benefits. Not only were his cases in Clark County and Washoe County reduced and/or dismissed, but he was also awarded several trips back to Ohio to be with his father who was dying of cancer. He was given room and board and compensation for his trips back to Nevada when he was preparing for trial testimony and when he testified at trial. Because there was so little other evidence against Mr. Berry, Mr. Iden's testimony played a huge part in his conviction and sentence to life in prison in the Department of Corrections.

We took the case on in 2010 knowing that it was going to be a difficult case; there was no DNA that could exonerate Mr. Berry, and we began looking at the case. In 2011, the actual perpetrator of the crime confessed to the murder and we then met with Mr. Iden to tell him that the actual perpetrator had confessed. We wanted to see if there was anything he had to add or anything he had to say. After asking me whether there was a penalty for perjury, which I told him I could not advise him on and if he wanted a lawyer he would need to get one because I was representing Mr. Berry, he admitted to us in detail that he had lied about the confession; that Mr. Berry had never even spoken with him; that he had never seen Mr. Berry before he testified against him in court; and that he understood that he was responsible for Mr. Berry's wrongful conviction and wanted to make it right.

After fighting us for four years, the Clark County District Attorney's Office agreed, based on both the confession of the actual perpetrator and Mr. Iden's recantation, that Mr. Berry was indeed an innocent man and that the charges against him should be dismissed. Mr. Berry went to prison as a 19-year-old, and 23 years later at 42 years old, he came home from prison.

In 2020, based on A.B. 267 of the 80th Session, Mr. Berry was awarded compensation for the time he spent in prison. He also recently has settled a civil suit that was brought against Clark County based primarily on the use of that jailhouse snitch. The reason I tell you all of this information is so you understand that Mr. Berry's case really illustrates perfectly what the problems are with jailhouse snitches.

I apologize for using the word "snitch." I have always had a hard time calling them "informants" because I find that very often they do not have information that is real. That is really the first problem, that jailhouse informants are inherently unreliable. In other words, they lie; they lie to get benefits, they lie to get leniency; and although some may be truthful—certainly this legislation does not suggest that we should never use them—we know that they lie and that they get benefits. Mr. Iden was exactly that person. This legislation would address that. Because the benefits they receive are often hidden and not disclosed to defense counsel, the use of jailhouse informants really does result in the conviction of innocent people like Mr. Berry.

The National Registry of Exonerations shows that about 10 percent of the reported exonerations in this country have included jailhouse informants. Nevada is not immune and Mr. Berry is not the only case. At least 15 percent of the reported exonerations in Nevada also include jailhouse informants. I will tell this Committee that within the next six months, the Rocky Mountain Innocence Center will be bringing two additional cases of innocence, both of which involved jailhouse informants.

There is a real danger here that the innocent are going to be convicted. Not only that, there is a real problem of the possibility of constitutional violations not only for the innocent but for the guilty. That is not a technicality; that is important. Our system relies on being constitutionally correct. If we use jailhouse informants, we risk that not only the innocent will be convicted, but that the guilty will have their convictions overturned because jailhouse

informants' information has not been provided to defense counsel. In Mr. Berry's case, none of the information about Mr. Iden's deals was provided.

I think the use of jailhouse informants hurts the victims of crime. In Mr. Berry's case, the system failed the victim. The wrong person was convicted and sent to prison for 23 years, and it was not until the recantation by the jailhouse informant and the confession by the actual perpetrator that that victim got any kind of justice. Even more than that, the criminal justice system can also fail a victim when a defendant who is incarcerated receives a benefit in one case in order to get leniency in another case, which is why this bill addresses that issue.

For all of these reasons and because A.B. 201 really acts to fix this part of our system that convicts the innocent, bipartisan lawmakers around the country have supported this kind of legislation. I urge you to support A.B. 201. I would like to turn the presentation over to Mr. Nathaniel Erb, State Policy Director, Innocence Project, who will walk you through the bill itself.

Chairman Yeager:
Before we finish up the presentation, I would like to thank you and the Rocky Mountain Innocence Center for what you did on behalf of Mr. Berry. We have talked about his case a couple of times this session. Although we have a lot of new members on this Committee, some of us were here last session and were very compelled by his situation, and frankly, by the grace he exhibited once he was released. I know it was hard work, years in the making, but hopefully you and your team can look back and feel a sense of satisfaction and accomplishment that it took a while, but we finally got there.

Nathaniel Erb, State Policy Advocate, Innocence Project:
The Innocence Project represents the wrongfully convicted. We work with legislators and courts to implement policies that address the causes of wrongful conviction, which is why we are here today. Jailhouse informants or in-custody witnesses have a concerningly outsized representation in cases of wrongful conviction. Assembly Bill 201 addresses these issues among those that my colleague, Ms. Anderson, and Assemblywoman González have pointed out.

This is not the first time that the state has considered this issue. In fact, as early as 2008 the criminal defense bar recommended these exact provisions to the Advisory Commission on the Administration of Justice. Yet repeatedly over the years, the district attorney's offices in good faith have rebuffed this effort, saying that they were going to take care of it internally, and organizations like mine have supported them and waited for that to happen. Most recently, the Nevada District Attorneys Association finally voted to adopt some of the provisions of this bill in all offices practically by 2019. However, last December, our office submitted a Nevada Open Records Act request to all offices, which showed that this still was not the case nearly two years later.

Assembly Bill 201 would finally remedy this issue. The language is based on these discussions and mirrors the American Legislative Exchange Council (ALEC) model policy and measures adopted across the states. The bill does four simple things:

1. It would require that all district attorney's offices maintain that list of informants used and the benefits they received. This will ensure that prosecutors have historical knowledge about the reliability of witnesses and can count on other offices to have that knowledge as well, so if they are using an informant, they can check with other offices to determine the reliability or issues of an informant.

2. It would require prosecutors to disclose benefits and specific evidence to the defense within 45 days of trial unless the judge determines that is not feasible for any particular types of evidence. While the U.S. Supreme Court already covered this and established that these provisions and this type of evidence are required under *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny, it did not provide specifics. Our cases and discussions with prosecutors prove it is not always clear what information is necessary. If the state discloses this evidence late, incompletely, or not at all, the accused cannot prepare an adequate defense. Establishing prompt, specific disclosures ensures that the tools in our legal system are available to all people in all cases. Further, the bill provides a safety valve of a judge's ability to adjust the timeline if required.

3. If the informant's testimony is admitted, jurors will be instructed to consider certain reliability factors when assessing their statements. Everyday people do not necessarily understand the intricacies of how informants come to be involved in a case and what is motivating them. Jurors should simply be brought up to the same level of understanding that prosecutors and defense have in order to weigh the evidence appropriately.

4. The bill would ensure that victims of any informant's crimes be notified if the informant receives leniency. The informant's victims should be notified if leniency is provided in any exchange for testimony. If justice and the involvement of a victim under provisions such as Marsy's Law matter one day, they should matter the next.

With regard to implementation and cost savings, we view A.B. 201 as very valuable for the state. As my colleague mentioned, cases like DeMarlo Berry and Fred Steese all involved informant cases. Across the country, $290 million has been paid out in civil awards alone from states in cases like these. Just last week it was announced that Mr. Steese would be awarded $1.4 million in compensation, and Mr. Berry reached a settlement for $1.5 million with Clark County. This does not account for the costs of court cases, the damages to communities for incarcerating the innocent, and overlooking those who actually committed the crimes. These regulations would improve judicial efficiency by reducing appeals for unconstitutionally withheld evidence. Additionally, clarifying when and what types of incentivized witness information must be disclosed would lead to fewer court delays and a decrease in resources spent litigating these cases.

In our testimony this morning, we also provided information from Connecticut and Texas, which have adopted these very same policies [Exhibit D] and shown how this could be done simply through Microsoft Word systems, Excel spreadsheets, or in-house technology products at little to no cost. In fact Connecticut and Texas both reported, prior to the adoption of the legislation and after the fact, that all the necessary workload was adopted into their already existing regular budgets.

In conclusion, A.B. 201 would improve the reliability of evidence and prevent wrongful convictions, enhance community safety, and protect Nevada. It is for these reasons that the Innocence Project supports A.B. 201.

[Exhibit E was submitted but not discussed and will become part of the record.]

Chairman Yeager:
Assemblywoman González, do you have any further remarks before we take questions from the Committee members?

Assemblywoman González:
No, we can take questions at this time.

Chairman Yeager:
I have one overarching question. We have obviously heard a lot of testimony about jailhouse informants and how they can be problematic, but nothing in this bill would prevent the use of a jailhouse informant. The way I read it, the issue is information that there was a jailhouse informant and the incentives that were offered needs to be disclosed to the defense counsel so they can prepare an adequate defense. I just want to make sure I have that correct, that nothing in the bill itself on its face would prevent the use of jailhouse informants. Could someone confirm that, please?

Assemblywoman González:
Yes, that is correct. This does not prevent, stop, or restrict the use of any jailhouse informant. This is just adding both protections for the district attorney's office and the defendant to use jailhouse informants.

Chairman Yeager:
Do we have any questions from the Committee?

Assemblywoman Hansen:
Perhaps one of the most fulfilling votes I made last session was on the DeMarlo Berry bill [A.B. 267 of the 80th Session]. I have a couple of questions regarding sections 5 and 6 of A.B. 201. Section 5 of the bill is requiring the prosecuting attorney to maintain complete and systematic records of cases prosecuted by the office in which testimony of an informant was used. I am a little surprised that you have to ask for that. Is that not already done?

Nathaniel Erb:
I think a lot of this bill has to do with things that we hoped would be done proactively, but in the cases that we have before us and colleagues like Ms. Anderson had, unfortunately it is not the case. This is the provision that in 2018 the district attorney's offices, in good faith, had adopted to require all offices to have an internal system for tracking. The Nevada Open Records Act requests submitted in December 2020 show that there is still some lagging behind. The provision of this bill would just ensure that other offices would continue to meet that bar—and that would go forward in perpetuity regardless of who was in charge—and that the internal system for tracking this is in place.

There is so much that has to be done in these cases; this is a piece that seems to be missed along the way. But what we have seen across the country is that as soon as this is something that prosecuting offices do, they love it. They know they can rely on other offices that have information to know exactly what happened in that case, was that informant reliable, whom to go to, all those details. The bar is really low for what information needs to be tracked by statute, but I would imagine that the individual offices themselves may go beyond the requirements of legislation to add more information that they find necessary.

Assemblywoman Hansen:
In section 6, the bill provides that if a prosecuting attorney intends to use testimony of an informant, the information or materials provided to the defense would include the criminal history of the informant, a copy of any cooperating agreement, et cetera. I am surprised that that is not done already. Is that not part of discovery, the information that would be shared with the defense? Is that not happening now?

Nathaniel Erb:
I agree. This information should already be covered under *Giglio* and *Brady* and their progeny, but offices like mine and Ms. Anderson's have found that it is not clear. While the courts have shown, and rules of the court have demonstrated, that information which goes to the impeachability of a witness of the state should be handed over, they are not spelling out what that information always is in all those cases. We definitely have cases across the country we can provide data on, prosecutorial misconduct in cases. There are also plenty of times when prosecutors are acting in good faith; they just are not thinking about these details that need to be handed over. By putting this in statute, we are spelling out that process. I think everyone agrees over the course of the years that this should be handed over, but we just want to make sure it actually is done because we are not seeing that that is uniformly the case. It would not go beyond anything that they should already be practically handing on.

Assemblywoman Cohen:
When Professor Anderson was telling the history with Mr. Iden and the list of benefits, what if Mr. Iden did not get any type of benefit as far as the reduction in his charges, but it was just trips to go see his father? He remained in jail or prison, he did not get any benefits as far as his criminal case, but he just got to go see his father before he died. Looking under the list of benefits in section 3, I do not see where that would necessarily be included. Would that fall under reward or amelioration of the current or future conditions of any terms of

sentence? Are we capturing those types of things? Sometimes you get more of a benefit than I think we are listing.

Jensie Anderson:
My understanding of the definition of "benefit" was, as you point to in section 3, that would be considered either a financial payment or a reward. Perhaps putting a comma after reward would then be the amelioration of any current or future conditions of term of sentence. That way it would be clearer that financial payment or reward would be separate from any leniency that was awarded in any other kinds of cases.

Assemblywoman Cohen:
I also want to make sure I was understanding that when there is the information that the prosecuting attorney maintains and provides regarding benefits, we are also capturing any offers that were made to police, not just deals that were made with the prosecuting attorney but if an informant provides the information to the police. Is that included as well?

Nathaniel Erb:
That information should be captured if it is in the knowledge of the prosecutors. We do not entertain in this bill that extra step of the prosecutor having to go out of their way and how they go out of their way to make sure they have everything from law enforcement. It would be everything that is in the hands of the district attorney's offices at the time and what they know of. Hopefully, and I think routinely, they are in regular communication with law enforcement about all of those types of aspects, and so if it would be captured, it would be considered under a benefit in going to that information and that testimony. It would be covered within whatever records they are recording and placing within the system.

Chairman Yeager:
I will note for the record as well, just as a point of clarification, section 4 of the bill defines "informant" in A.B. 201 as someone who was with a defendant while they were in jail or prison together. There are other informants out there in the community, confidential informants, who are not incarcerated and who sometimes work with law enforcement to provide information. They would not be covered by A.B. 201, but there would still be constitutional requirements that that type of information be conveyed to defense attorneys. That is already required. There is often litigation about what exactly has to be turned over and especially if you have confidential informants who are working with the police. I wanted to make clear that this bill contemplates the situation where two or more individuals share a jail or prison cell and that is usually allegedly where a confession of some kind was made. I also did not want to leave the Committee with the impression that other informants' information would not be turned over; it is just not expressly contemplated by the bill in front of us.

Are there any questions from the Committee?

Assemblyman Orentlicher:
As you talk about the problems with jailhouse informants, it makes me think of similar problems with other kinds of witnesses, like codefendants, who might be promised a more lenient sentence if they implicate another defendant. Do we have to address that as well? Do we have the same kinds of problems—maybe not as serious, but still significant enough that we should be spelling out similar kinds of safeguards?

Nathaniel Erb:
I will ask Ms. Anderson to weigh in on your question as well. We want to stay specific to jailhouse informants within the confines of this bill. My office would be happy to discuss your concerns around other types of witnesses with you. There is a whole range of issues that we lobby on and support, but I would ask Ms. Anderson to provide her thoughts about that specific aspect which is outside the confines of this bill.

Jensie Anderson:
Quite frankly, we do not see as many issues with other kinds of witnesses, like codefendants. Certainly sometimes there is police pressure or just the need to lie on the part of codefendants or other kinds of witnesses, but we do not see as many problems with those kinds of witnesses as we do with jailhouse informants. I think that is why we wanted to attack the problem first with jailhouse informants. We do not see the problems as often with the hiding of evidence in those cases. Very often if a codefendant decides to testify, that deal becomes absolutely clear. Again, it is certainly an issue that can be a problem, but as Mr. Erb said, we do want to focus on this particular issue in this particular bill.

Assemblyman O'Neill:
What happened to Mr. Berry is a great example of a horrible police investigation, poor prosecution on the district attorney's part, and some horrible defense work too. How many times have we had repeat jailhouse informants that you know of? You said you keep statistics, and 15 percent of the cases are jailhouse informants. How many times is it the same jailhouse informant in Nevada whom you want to keep records on?

Jensie Anderson:
There certainly is a problem with what we call "serial snitches" or "serial informants." In Nevada, I can honestly say I have not seen a problem with serial informants to date. All of the informants whom we have dealt with and are dealing with, we only know individually that they have done that. My understanding is that Richard Iden has tried to give information in other cases, and whether he has been able to do that or not, I am not sure. I can also tell you that when he was rearrested after he was released from prison, when he gave the recantation, he actually recanted again in order to try to get more benefit from the state. The short answer to your question is we have not seen the serial informant in Nevada yet, but we do see them around the country.

Assemblyman O'Neill:
Let us just talk about Nevada because that is where we are and that is this law. I really take offense at some of your language when you continue to call them "snitches." They are

informants just like anybody else. Once they come forward, is it not policy that I know of—I was in investigations for over 30 years—on any informant, whether it was from a citizen who was not under arrest or had any involvement directly, I had to build collaborating evidence or additional information before a case could be brought forward. Over the years the legal system has matured where, particularly on homicide, there are requirements that the prosecutor and the defense attorney meet certain qualifications, correct? So some of this cannot be impeded, correct?

Jensie Anderson:
Yes, sir.

Assemblyman O'Neill:
Is not some of this the defense attorney can, through discovery, depositions, or during trial, question the informant when they have to testify about receiving leniency or renumerations or gifts, et cetera, on testifying? During the time of jury instructions, the judge gives instructions to the jury on how to accept witnesses' testimony, not just informants, but all witnesses who testified, correct?

Jensie Anderson:
First of all, Assemblyman O'Neill, I apologize for any offense that may have been taken. I truly sincerely apologize for that and will try to watch my language more carefully. I think you point out exactly the way the system should work. It absolutely should be that defense attorneys ask for discovery; that the prosecution provides all relevant discovery, including any information about any witnesses who are testifying including jailhouse informants, that has been investigated; that when they go to trial the jailhouse informant is honest on the stand; that the prosecution, if the jailhouse informant is not honest, corrects that information; and that the judge then gives an instruction that deals with all witnesses and in particular with regard to incarcerated witnesses. Unfortunately, what we have found is the system just does not work as it was meant to work.

As you point out, I have very seldom seen a case where the defense did not ask for discovery. In fact, I have never seen a case where the defense did not ask for discovery. I have seen cases where, when discovery is provided by the prosecution, information about the testifying witnesses, including informants, is not provided. That is the case of Mr. Berry and others I have seen in Nevada as well as the two that Rocky Mountain Innocence Center will be filing soon. That is unfortunate. Without an open records discovery process, that happens; that may happen on purpose, or it may happen negligently, or it may happen on accident. I am certainly not trying to demonize prosecutors in any way. Unfortunately in Mr. Berry's case, there was some prosecutorial misconduct. I also agree with you that defense attorneys do not always do their jobs. But usually I have seen, when there is a jailhouse informant on the stand, they do ask the jailhouse informant about benefit and the jailhouse informant lies about whether they have received that benefit or they only give a partial answer to the benefit question or the benefit has not been given yet. For example, they are told if their testimony is useful, they will get the benefit, so they can testify that they have not gotten the benefit yet. There are a whole lot of ways that the system goes wrong.

What we hope to do with this bill is to try to fix that, and yes, you are absolutely correct; the justice system has matured. What has also happened is that within the innocence movement we have discovered these fissures and trends within the criminal justice system, including in Nevada, that we think we can fix or begin to fix with legislation like this that can provide the mechanism so that these kinds of problems do not continue.

Chairman Yeager:
Mr. Erb, I wanted to confirm that you said the Nevada District Attorneys Association agreed at some point that each office in the state would adopt a policy around this topic. I think your testimony was that some have and some have not as of a few months ago. Could you confirm that to make sure we have it right?

Nathaniel Erb:
We submitted information [Exhibit D] that we had been working with various offices on the history of this issue. I do not want to speak out of turn for the district attorney's offices, so this is just what we have discussed in public with them over the years. In 2008, when the defense bar originally brought provisions of this bill to their discussion to one of the interim committees, the Clark County District Attorney's Office had suggested that they were developing an internal policy both for the tracking and around how the discovery disclosure should be handled. The information I have on the 2018 vote by the Nevada District Attorneys Association went specifically to section 5 around the capturing of information about the use of informants and testimony and benefits they provided to. That was the information we had requested information on through the Nevada Open Records Act and found that there were still some offices outstanding after the 2-year window, but we had information that they had voted to do it by 2019. We polled in 2020, but we have not talked with the district attorney's office, so I believe that they are working proactively to adopt this. It goes to show that for that portion, it is not a heavy burden and there are plenty of states that have done this. By legislating that here in this bill, we just want to make sure that good practice continues in perpetuity.

Chairman Yeager:
I am certainly not asking you to speak for the Nevada District Attorneys Association, but it sounds to me like the need for such a tracking system to facilitate discovery and sharing of information that is constitutionally required—the need seems to be clear—and I think folks seem to agree on that. There may be some disagreement about exactly how that should be structured and other provisions of the bill, but we will have a chance to hear that in the supportive and opposition testimony.

Are there any other questions from the Committee? [There were none.] Before I go to supportive testimony, I wanted to thank Mr. Erb and the Innocence Project as well for the work that you did on Mr. Berry's case. Many of you will remember Ms. Michelle Feldman with the Innocence Project, who was instrumental in helping to present last session's exoneration compensation bill [A.B. 267 of the 80th Session]. She has moved on from the Innocence Project, but Mr. Erb, if you are still in contact with her, if you could thank her for her work, and thank you and your staff for the hard work that you do every day. I, for one,

will say that I wish there was not a need to have an Innocence Project or a Rocky Mountain Innocence Center. Maybe someday we will get there, but until then we will keep working to improve our justice system.

Is there anyone who would like to testify in support?

Tonja Brown, Private Citizen, Carson City, Nevada:
I am with Advocates for the Inmates and the Innocent. I have submitted my conceptual amendments [Exhibit F and Exhibit G] that are supported by some documents [Exhibit H] to A.B. 201. After submitting my exhibits, I had forgotten to put my conceptual amendment together until moments before the deadline. I apologize because I realized that section 6 of the amendment should have been amended into section 5, making it subsections 3 and 4. The reason I am putting this together is because in the original bill, in section 3, subsection 4, I find the words "financial payment" somewhat vague and want to clarify that I believe it should be defined to include the words "secret witness." A secret witness is a confidential informant who did not have to expose themselves to anyone, including the police and the district attorney, yet the secret witness does have a financial payment interest.

The intent of the secret witness program is to provide anonymity to the persons providing the information so that the law enforcement agencies can acquire valuable information and evidence that will lead to the arrest of a suspect and the district attorney's office in obtaining a conviction. However, that may not always be the case. There are times when there is a motive other than justice for a victim of crime to contact secret witness. These motives can be a means of getting a financial payment, and without a conviction, there is no financial payment. It can also be a form of retaliation against another person. For those reasons, I am asking that this Committee accept my conceptual amendments [Exhibit F and Exhibit G] to A.B. 201.

Chairman Yeager:
Ms. Brown, have you spoken with the sponsor of the bill about your proposed amendments?

Tonja Brown:
No, I have not.

Chairman Yeager:
Because we are in supportive testimony, let me ask you this: it does not sound like the sponsor has agreed to your amendments at this point. My question is, Even if your amendments are not adopted, are you in support of A.B. 201 as it is written now or would you be in opposition if it does not include your amendments [Exhibit F and Exhibit G]?

Tonja Brown:
I am in support of this bill whether or not my conceptual amendments are accepted and passed. I am definitely in favor of it. I am only putting this in because I want it in the back of your minds that there are other things involved that are not mentioned in the bill, and some

of the testimony that is coming forward in this amendment actually can help what is being discussed.

Chairman Yeager:
I just wanted to make sure that we were accurately categorizing your testimony. We have had a little bit of an exchange, but if you want to wrap up your supportive testimony, I would appreciate it.

Tonja Brown:
With the passing of the public records request, it is also possible that newly discovered evidence could be found in those public records, evidence that could point to a state's witness as being a secret witness. I just wanted to put what I had in there that kind of answers some of the questions that are being asked. Under section 5, subsection 2, the records described in section 1 are confidential, and I have added "unless deemed by a court order to be released or turned over to the defense and must remain a public record, and are not public books or records within the meaning of NRS 239.010.11" [page 1, Exhibit F].

I added subsection 3, "If at any time the District Attorney receives an allegation of an informant, or a state's witness receiving monies from the Secret Witness Program, the District Attorney's Office must disclose the following information or material to the defense as soon as possible, regardless if the defense has already appeared before the court, is working on an appeal, post-conviction petition, Writ of Habeas Petition, or the defendant is in pro se and or has no petition or appeal pending, the Must be notified." [page 1, Exhibit G]

I added subsection 4, "The District Attorney's Office must keep records of these allegations for possible comparisons to other trial and hearing testimonies that may have been given in court. And these records must be provided to the Defense and or defendant" [page 1].

I am definitely in support of A.B. 201 as written without my conceptual amendments.

Chairman Yeager:
For members of the Committee, the proposed amendments that Ms. Brown referenced are available on the Nevada Electronic Legislative Information System as exhibits, but again, at this point the sponsor has not agreed to the amendments, so they are not viewed as friendly amendments. As Ms. Brown stated, she is in support of the bill regardless of whether the amendments are ultimately accepted. We will categorize her testimony as supportive.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
This is a crucial bill to ensuring that Nevada has a policy of making changes to ensure justice for those involved in the criminal justice system, that Nevada is actively engaging in steps to do our best not to convict innocent community members. We appreciate the portions of this bill that require transparency and not a trial by ambush. There were a lot of questions regarding discovery. Discovery issues are something that defense attorneys consistently have to litigate. This provides clarity to our discovery process. We are continuing to work with

the sponsor to ensure that defense attorneys are able to adhere to our responsibilities of ethical duties and other duties for our clients. The Innocence Project has been diligently working on this issue for several years. We appreciate their hard work, and now is the time to protect our community members.

Diane Goldstein, Executive Director, Law Enforcement Action Partnership:
Our organization is a nonprofit group of police, prosecutors, and other criminal justice professionals who work to make communities safer by focusing law enforcement resources on the greatest threats to public safety and healing police and community relations. Leading the crisis negotiation teams from my police department, I saw firsthand the importance to public safety of our communities having trust and confidence in the justice system.

Crisis negotiation is all about winning the trust of people in crisis. Research underscores that police in general depend on community trust because without it, people do not report crime or cooperate with law enforcement. One reason police do not trust the criminal justice system is that they have witnessed or experienced unfair trials and investigations resulting in wrongful convictions. An important source of wrongful convictions is testimony from jailhouse informants. Multiple people convicted due to the false testimony of jailhouse informants have been exonerated in Nevada, where I live. Media coverage of these wrongful convictions destroys the community trust we rely on, to say nothing of the financial cost of appeals and retrials.

Assembly Bill 201 would protect Nevadans from false jailhouse informant testimony. Many states, including Oklahoma, Florida, Connecticut, Illinois, Maryland, Nebraska, and Texas, already regulate jailhouse informant testimony. Prosecutors track which jailhouse informants are testifying in which cases. Defense attorneys and juries are informed that the person is a jailhouse informant and if that person is receiving benefits in exchange for testifying. This bill would bring Nevada up to speed with these other states with a negligible cost to the prosecutor's office. Texas and Connecticut prosecutor's offices reported little to no impact on budgets and workloads for tracking these informants.

In short, I support A.B. 201 as does my organization because I know firsthand how important it is to improve trust in the justice system. When you take commonsense steps to improve public trust, you get more cooperation and we keep communities safer.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
This is a problem in Nevada, not just around the United States, that needs to be corrected, and this is a commonsense step in trying to prevent wrongful convictions. This bill lays out a framework to do that. I would like to echo the comments of the people who came before me and ask this Committee to please pass this bill.

Nicholas Shepack, Program and Policy Associate, American Civil Liberties Union of Nevada:
I want to talk a bit about my experience as a master's-level social work intern at the Washoe County Public Defender's Office. I worked with individuals accused of category A felonies. While the individuals and crimes varied greatly, one thing that was uniform was the fear that you could see in the eyes of these defendants when they received their plea deals. I often spent hours with these individuals helping them deal with their situation and their mental health as they were in the aftermath of receiving these deals that were often for a decade or more in state prison. I can only describe this fear as true fight or flight. I imagine it is the same fear that is felt when one's life is in imminent danger. There is no real way to fight your way out of county jail, and fleeing is not an option. While I am deeply upset by those who provide false information, I understand, and I have seen the fear and desperation in individuals facing long prison sentences. Because of this, we need safeguards to make sure that any information provided by a jailhouse informant is in fact true. This bill provides those safeguards, and for this reason and the reasons presented by those before me, I ask you to support this bill.

Jim Sullivan, representing Culinary Workers Union Local 226:
We support A.B. 201 because we believe that it would protect Nevadans against false testimony of jailhouse informants, which has led to wrongful convictions and cost the state millions of dollars. During the 80th Session, we heard the heartbreaking story of Mr. DeMarlo Berry, who did 22 years in prison for a crime he did not commit largely due to false jailhouse informant testimony. Unfortunately, Mr. Berry is not alone. Bad jailhouse informant testimony has also played a part in the exoneration of Mr. Fred Steese, who served over 20 years for a crime he did not commit. Jailhouse informants played a big role in all of these cases, and Nevada needs legislation to ensure this injustice never happens again. Assembly Bill 201 does just that. Tracking jailhouse informant use and requiring prosecutors to disclose specific details about jailhouse informants, such as the details of any deals they have received in exchange for testimony and any other cases that they may have benefited from testimony, is smart and commonsense policy. These are simple fixes that will help ensure no other Nevadan has years of their life stolen from them due to wrongful convictions.

Last session, the Assembly Committee on Judiciary did the right thing by ensuring that exonerated Nevadans are compensated for the time they served due to wrongful convictions. Now we must make sure that no other Nevadans have decades of their lives taken from them because of false testimony and jailhouse informants. This bill will help make that a reality and the Culinary Workers Union urges you to vote yes on A.B. 201.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
I also want to echo the sentiments of those who spoke before me and add our support for this legislation for the record. We urge you to act to ensure these commonsense safeguards are put in place.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
I am in support of A.B. 201 with or without amendments [Exhibit F and Exhibit G]. However, I would urge the sponsor of the bill to take a look at Ms. Brown's amendments. I think the suggestion is good that secret witness possibly be included in the language. I will give you an example of a case that is a problem case that is not a jailhouse informant. I believe the Nolan Klein case is one that applies to the questions some of the members were asking about, and I urge you to read the sworn affidavit submitted by Ms. Brown as it applies to several of the questions that have been asked today and should affect future law changes [Exhibit H].

The trial was in 1989. Information was discovered in 2009 when Judge Brent Adams issued an order to turn over the entire file. The state's witness, Ms. Gritter, was an informant and she was the person who identified Mr. Klein's voice on the 911 call. Mr. Klein had received information from witnesses that Ms. Gritter was the secret witness and was paid $2,000. None of this was revealed during trial to Mr. Klein or his defense attorneys.

In 1991, Ms. Gritter was contacted by an investigator in a postconviction appeal for Mr. Klein. He tried to subpoena her but was never able to as she did not go to work until after the hearing. Ms. Gritter wrote a letter to Deputy District Attorney Ron Rachow of the Washoe County District Attorney's Office asking him what she should do. Ms. Gritter hid from the investigator. She was never served and never had to testify or answer, as she was the secret witness.

In Ms. Brown's affidavit [page 70, Exhibit H], it says that in October and November of 2018, this information had been discussed and provided to Ms. Jennifer Noble at the Washoe County District Attorney's Office Conviction Integrity Unit. In the exhibit there is correspondence between Mr. Plater, who was the defendant's attorney for postconviction. Mr. Plater sent the investigator who was never able to contact her. At postconviction it was raised that the defendant had received two separate letters from two separate people saying Gritter was the secret witness. Ms. Gritter herself wrote a letter to the defendant discussing the secret witness. These letters were to be brought forward to the court at the postconviction hearing, but when the defendant received his property at the jail waiting for the hearing, the letters were missing. Including secret witnesses in the bill could possibly prevent secret witnesses who are unknown to prosecutors or to the defense and avoid injustices. I fully support the bill either way.

Jim Hoffman, representing Nevada Attorneys for Criminal Justice:
We support this bill for the reasons that the previous people have mentioned. I would like to make a further point that the point of the court system is to find the truth. It is to determine whether in this case the defendant actually did commit a crime or not. So many of our evidence rules are procedural rules, are just about making sure that the jury has the facts, that they have the truth to figure out what actually happened. The point of this bill is simply to give those facts to the jury. It does not compel any particular holding; it is keeping in place the basic principle that the jury decides whether someone is guilty or innocent, and just

ensuring that we are actually getting at the truth. We support the truth and that is why we support this bill.

Chairman Yeager:
Is there anyone else who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition?

Jennifer P. Noble, Chief Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
I would like to begin by thanking Assemblywoman González and the Innocence Project for meeting with us regarding our concerns of this bill. By way of background, the Nevada District Attorneys Association worked on this issue with the Innocence Project as part of an Advisory Commission on the Administration of Justice working group in a prior interim session because we recognize that testimony from incarcerated persons at trial regarding information that they learned while they were incarcerated raises legitimate concerns regarding wrongful conviction. When an incarcerated witness, or any witness, testifies at trial, the defense is entitled to know what benefit they have received under *Brady* and *Giglio* so that they can conduct an adequate cross-examination. And that is what did not happen in Mr. Berry's case.

We are always mindful of our discovery obligations and our constitutional disclosure obligations; they are part of our special ethical duties as prosecutors. Jailhouse informant testimony is used rarely, and prosecutors are always bound by the *U.S. Constitution*. However, in recognition of the Innocence Project's concerns, we developed a model jailhouse informant policy in early 2019. That policy requires the tracking and disclosure of cooperation agreements with jailhouse informants and disclosure about that agreement and the information underlying it in any subsequent case.

Just yesterday afternoon I was able to verify that the district attorney's offices in Washoe, Clark, Carson City, Churchill, Douglas, Humboldt, Lincoln, Elko, Pershing, Mineral, Storey, and Nye Counties have policies regarding the disclosure of such information and the tracking of that information. The district attorney of Eureka County informed me that they did not adopt a written policy because they do not use jailhouse informant testimony, period. I am still trying to connect with our smaller counties of White Pine, Esmeralda, and Lander to verify their status. It is important to remember that some offices have had changes of leadership since 2019 and so policies may have been lost in that transition. Even without policies, prosecutors have these constitutionally derived obligations of discovery and disclosure.

Assemblywoman González stated that the object of this bill is to guard against false information from jailhouse informants, but its sweeping provisions cover instances in which there is no testimony at all. Section 4, subsection 1, defines an informant who provides "testimony or information," and that phrase is used throughout the bill and is the cause of many of our concerns. The repeated use of "or information" throughout the bill requires law

enforcement to burn informants even when we are able to independently verify the information they provide and they never testify against the defendant.

Section 4, subsection 2, provides that an informant is someone who "may receive a benefit for testimony or information." This presents a very real safety concern for incarcerated persons who are particularly vulnerable to retaliatory violence while they are incarcerated. Although section 6, subsection 3, allows the court to find that if disclosing the informant's identity could result in substantial bodily harm, his or her identity is still revealed to the defense counsel and there is no mechanism or consequence to any attorney who provides that information to their client. This discourages inmates from speaking up regarding incidents of prison violence because their identity is going to be revealed even if they never testify in a proceeding. This impedes our ability to address organized crime in prison and the rising violence of those who provide information in prison violence cases.

Additionally, informants may offer information that they hope will benefit them at sentencing with no inducement or offer or even contact from law enforcement. Their information is not solicited and it is never used. But their defense counsel may still argue that they assisted law enforcement at sentencing even when they did not. We cannot stop those arguments from being made, but section 4 imposes disclosure obligations on prosecutors even when no information is requested or used and no inducement or benefit is conferred. This does nothing to protect against wrongful convictions and instances like Mr. Berry's tragic case. To be clear, we recognize that the benefits offered to jailhouse informants must be disclosed to the defense and the information they provide needs to be disclosed so that a testifying informant can be adequately cross-examined. Their attorneys and the defendant are entitled to do this under the *U.S. Constitution*, but as written, A.B. 201 reaches far beyond what the *Constitution* requires, far beyond what is necessary to avoid wrongful convictions. It does this by endangering prisoners who dare to speak out about prison violence even if their testimony is never used and their information is independently verified.

Ms. Anderson used the word "snitch" during her testimony, and she apologized for it. We have all heard the phrase, "snitches get stitches," and sometimes it is used colloquially between folks who have never seen the inside of a jail cell. There is nothing funny about that phrase to people who are in prison, who are faced every day with the prospect of violence against them. This bill requires them to be identified even if their information is independently verified and their testimony is never used.

We remain willing to work with Assemblywoman González and stakeholders to craft a bill that is consistent with the constitutional obligations regarding the tracking and disclosure of benefits afforded incarcerated witnesses, and we thank this Committee for its time.

Chairman Yeager:
I would certainly invite future collaboration on parts of the bill that you believe to be problematic. Obviously, we are moving through session at a rapid pace, but there is still time

for that. I would invite further discussion from you on behalf of the Nevada District Attorneys Association on some of those concerns.

Is there anyone else who would like to testify in opposition?

Ronald P. Dreher, Private Citizen, Reno, Nevada:
I am an honorably retired detective from the Reno Police Department's Major Crimes Unit. I have lobbied on behalf of our state and local law enforcement peace officers, our families, and victims of crime for many years. Based on the language of A.B. 201, I am requesting your opposition [Exhibit I].

This bill appears to codify the discovery process as you have heard. *Brady* is about discovery, and discovery should be given to the defense as required. If discovery is not provided, then there is an obvious problem on both the prosecution and the defense side. For the last several years of my career, I was assigned to the Reno Police Department's Major Crimes Unit. Our major crimes function was investigating child abduction murders. Many times, information regarding unsolved cases comes forward when incarcerated individuals confess or brag to other inmates their past criminal wrongdoings. When that information is shared usually in the form of a "kite" with correctional officers they in turn notify us, and we then begin the lengthy investigation process, importantly, of corroborating their information to determine whether the information is credible. Oftentimes this process results in solving old murder cases. The bill in its present form exposes those inmates bringing that information forward to potential harm or death. As you heard Ms. Noble say, their identities are known and they are labeled as "snitches."

We must protect informants from harm or they will not come forward and offer their assistance. With *in camera* hearings before a judge such as listed in section 6, keeping the informant's identity confidential is necessary. The use of informants in solving crimes such as the ones I still investigate is crucial to solving these horrific crimes. To state that the defense attorney will keep the confidential information from the defendant is ludicrous. Perhaps amending the bill by placing criminal and civil sanctions on those defense attorneys who divulge the confidential information to their clients and where the release of that information leads to the harm or death of an informant, may provide the protection needed.

In my opinion this is an antivictim bill. In conclusion, the implementation of this bill will lead, in my opinion, to criminals not being held accountable for their acts and for the crimes they have committed. If potential informants know that their identity will be revealed, they will not come forward with vital information so critical to helping victims find closure and aiding law enforcement in solving crimes. On behalf of the professional peace officers of our state, our families, and victims of crime, I am asking you to oppose this bill in its present form. We need to continue to encourage informants to come forward with the important and crucial information they possess. Thank you for opposing A.B. 201.

Steve Grammas, President, Las Vegas Police Protective Association:
We represent over 3,500 commissioned officers in Nevada, and I am also a proud member of the Public Safety Alliance of Nevada. I am in opposition to A.B. 201 as it could negatively impact several avenues as they relate to informants. This bill will substantially limit the effectiveness of law enforcement's use of informants in the prosecution of criminals. It has been made known by Mr. Dreher as well as others who were in opposition that this bill not only discloses the identity of an informant who is a percipient witness to something or who has direct information who could testify, but could also make known people who do not have an intention of testifying or would otherwise not normally be made known. I fear that in law enforcement, this is a slippery slope into working its way into the use of confidential informants out in the regular world for police officers.

I myself have used confidential informants for approximately nine years of my career in law enforcement and know how valuable a tool that informant is. I also know how scared the informants themselves are of getting involved with law enforcement even with the protections currently in place. If we begin to chip away at those, we will start to see heinous criminals never being apprehended, never being held accountable, because informants will not want to come forward and participate. There has been talk of the cases that were bad and how prosecutors or potentially officers mishandled information, yet nobody has spoken of the good cases where that testimony from an in-custody subject gave us the ability to hold a heinous criminal accountable and prosecute him for the acts he committed. I would ask that a lot more thought go into this bill as opposed to just a sweeping passage, and I would appreciate the involvement, if needed, from the Las Vegas Police Protective Association.

A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are opposed to A.B. 201. We would like to echo the opposition testimony provided by Ms. Jennifer Noble of the Nevada District Attorneys Association.

Chairman Yeager:
Is there anyone else who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? [There was no one.] I invite the presenters back up for any concluding remarks.

Assemblywoman González:
I just wanted to correct some of the information that was shared in testimony. This bill does not change or harm the use of incarcerated informants. Rather, it protects both offices, both the district attorney and the defendant when there is a situation where a jailhouse informant is used. You are still able to use jailhouse informants, you are still able to vet the jailhouse informant, and all of those procedures addressed in this bill are what the district attorney's office should already be doing and has agreed to do. It is really to clean up some of the issues that we have had when it comes to using jailhouse or incarcerated informants.

Jensie Anderson:
I want to thank the Committee for taking the time to consider this bill and reiterate our support for it. I heard the concerns expressed by those in opposition, but I wanted to address just a couple of things. First of all, it does not affect the police and their ability to use confidential informants. This is simply a tracking system, really, for prosecutors and information that prosecutors need to turn over to defense attorneys. It does not affect confidential informants unless those confidential informants are currently incarcerated and are talking to the defendant while they are incarcerated. I just want to make clear that it is a narrow bill at this point.

We understand that if someone decides to become an informant while they are in jail or prison and if they end up spending longer time, they may be in danger because of their choice to give information on another case. However, it does not endanger them any more than what endangers them now because, as pointed out by those in opposition, prosecutors are constitutionally obligated now to give that information to defense attorneys. All this does is codify that constitutional obligation in statute.

Finally, it is really important to me that you understand that this would have made all the difference in Mr. Berry's case. I think Mr. Berry would want you to know that too. When I told him that Mr. Iden had recanted his testimony, it was the only time I saw him get emotional during the entire time I represented him. He could not understand why someone would put an innocent man in prison. And I really cannot understand that either. Had the defense had the information about what Mr. Iden was getting in exchange for his testimony—the leniency, the rewards—I think that would have brought reasonable doubt to his testimony and likely resulted in Mr. Berry's acquittal.

I think it is important to see that the effect of this is to protect the innocent, to protect the prosecutors, to protect defendants, and to protect the victims. I ask you to support A.B. 201.

Nathaniel Erb:
I would like to thank the Committee for all its questions. Many have talked with us and other partners over the years. It has been at least 13 years of discussion around this issue in which the bill and the key provisions of it have changed and evolved, but are still that core conversation. We have had many, many years of conversation about this and many more discussions. You have heard from the opponents this morning that, in large part, they are not really opponents. They agree about the key provisions and what we are trying to attain, and I do not view them as our opponents either. I think we are all in the same boat. If there are questions around key word changes or language changes, I am sure we will continue to have time available to talk about that with them.

Assembly Bill 201 is a solid bill built off of the ALEC model; built off of language passed in Texas, Connecticut, Nebraska, and Maryland that we worked on that goes to all these provisions. We do not see the concerns, but we are happy to entertain them and discuss them if there is a word out of place or a comma that could be put in to tighten it up. I think the Committee has heard today many compelling reasons for why this legislation is needed and

that these are very rare instances of use, important use. But we need to make sure that our communities are not harmed by people being wrongfully incarcerated, that our communities are not harmed by people going free because they were not properly identified, and that our court system works the way that we intend for it to work. This is something that I think should be a low bar for us, and we are excited to work with the Committee on this final last step after the decades of work on this issue to get it over the finish line. I thank the Committee for discussing this with us over the years and the many members of the public who spoke today, and we are excited to finally finish this issue.

Chairman Yeager:
We do have a little bit of time still—about a month until our first Committee passage deadline—so I would invite the presenters to continue the dialogue with those who spoke in opposition. I agree, I do not think there is a philosophical opposition to what is trying to be done. I think it is an opposition to particular portions, words, or phrases.

I will close the hearing on A.B. 201. I will open it up for public comment.

Denise F. Quirk, Vice Chair, Advisory Committee on Problem Gambling, Department of Health and Human Services:
I am honored to be the elected voice of the Governor's Advisory Committee on Problem Gambling (ACPG) here with our message regarding legislation involving Nevadans under the age of 18 participating in any gambling activity, including charitable games or lotteries. The ACPG strongly endorses maintaining a minimum age for any gambling activity. There should be no distinction between cash or merchandise as prizes and no exception to the minimum age that is there to prevent risk to young people. Science points to early exposure to gambling as one of the most significant factors increasing the risk of problems in later years. March is Problem Gambling Awareness Month, and we encourage everyone to read the Governor's proclamation and other useful information found on the Nevada Council on Problem Gambling's website. The theme this year is Awareness Plus Action, and we at the ACPG encourage learning what gambling is, what problem gambling is, and what is available for knowledge, prevention, and care for all Nevadans.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
My brother was killed during a mental health crisis, hog-tied by the Reno Police Department for 40 minutes, and then asphyxiated to death at the Washoe County Detention Center. I wanted to mention that yesterday was actually the six-year anniversary of Arteair Porter's killing by Washoe County, Sparks, and Reno police. I neglected to mention that the gun Arteair had was a BB gun.

Today I want to talk about Johnny Bonta who was killed October 22, 2017, at 4 a.m. What I want to talk about is what his family experienced and their treatment from Reno police and Sparks police. Johnny was shot at his home. The police then kept his wife Lisa, who was 52 years old and suffering from terminal stage 4 breast cancer, and her 16-year-old daughter, who was also present, in an ambulance three feet away from where Johnny's body laid, riddled with bullets from the police. From 4 a.m. until 8 a.m. they were kept in the back of

a police ambulance. Lisa was denied her medication. They were placed into the ambulance as Johnny's body was laying feet away. Family members were denied access to Lisa, who was without her oxygen and medication and wore only a thin nightgown. They sat feet from his body and they were denied use of the bathroom and were not allowed to leave the ambulance.

After four hours, they were then brought to the Sparks Police Department to be interrogated for hours, never being told that they could leave and that they did not have to participate in this interrogation. These families were in shock and grief and were dragged down to the department after their loved one was killed right in front of them. The entire time, her older daughter Jill was at the apartment trying to obtain Lisa's medication and oxygen, and Reno police refused to give her Lisa's medications. Lisa did file a lawsuit against the agencies, and she did settle with them, but sadly, as I mentioned before, she never found out who the officers were who killed her husband. She died from her breast cancer months before Washoe County District Attorney Christopher Hicks ever released his report nearly two years later. Please support bills that promote transparency and accountability and provide further protection for community members and not police.

Benjamin Challinor, Policy Director, Faith in Action Nevada:
On March 31, 2021, both the state and federal eviction moratoria are set to expire. According to the last numbers that have been reported, there are an estimated 500,000 Nevadans at risk of facing evictions. The Kenny Guinn Center for Policy Priorities also reports that the majority of these are experiencing unemployment and difficulties in paying rent due to COVID-19. It is disproportionately hard in Black communities. Unless the moratoria are extended, we will be facing another crisis in Nevada. We should be asking what can be done to help these Nevadans who have fallen through the cracks and are being left behind. Due to the extremely large number of pending unemployment and rental assistance claims, families are not able to receive the public assistance that the state has promised them in time to stave off evictions. There are two bills that the Committee can act on, Assembly Bill 141 and Assembly Bill 161. Those bills will provide much relief to those who are already suffering due to COVID-19 and we hope that the Committee acts. Just to make a final note, Nevada should be focusing on keeping families in their homes now more than ever.

Chairman Yeager:
Is there anyone else wishing to provide public comment? [There was no one.] Are there any questions or comments from the Committee? [There were none.] While we were meeting, our agenda was posted for tomorrow. We will be starting at 8 a.m. We have three bills to hear tomorrow as well as a work session with seven bills. At some point today, you will be getting the work session document with details. I would encourage you to refresh your memories on those bills. If anyone has an issue with any of the bills on work session tomorrow, please let me know.

I do not have agendas out yet for next week. I will update you tomorrow on next week's agendas. I want to remind everyone that it is daylight saving time this weekend, so we will unfortunately lose an hour of our weekend.

The meeting is adjourned [at 10:14 a.m.].

RESPECTFULLY SUBMITTED:

_____
Traci Dory
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 document titled "AB 201: Protecting Nevadans from Untrustworthy Jailhouse Informants," submitted by Assemblywoman Cecelia González, Assembly District No. 16, in support of Assembly Bill 201.

Exhibit D is a document titled "Rocky Mountain Innocence Center & Innocence Project Testimony Supporting Assembly Bill 201," dated March 11, 2021, submitted and presented by Jensie Anderson, Legal Director, Rocky Mountain Innocence Center; and Nathaniel Erb, Policy Advocate, Innocence Project, regarding Assembly Bill 201.

Exhibit E is a letter dated March 10, 2021, from the American Civil Liberties Union of Nevada, et al., submitted by Nathaniel Erb, Policy Advocate, Innocence Project, in support of Assembly Bill 201.

Exhibit F is a conceptual amendment to Assembly Bill 201, submitted by Tonja Brown, Private Citizen, Carson City, Nevada.

Exhibit G is a second conceptual amendment to Assembly Bill 201, submitted by Tonja Brown, Private Citizen, Carson City, Nevada.

Exhibit H is an affidavit of Tonja Brown with accompanying exhibits, submitted by Tonja Brown, Private Citizen, Carson City, Nevada.

Exhibit I is written testimony dated March 10, 2021, from Ronald P. Dreher, Private Citizen, Reno, Nevada, in opposition to Assembly Bill 201.