SECTION MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-first Session
April 29, 2021

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:01 p.m. on Thursday, April 29, 2021, Online and in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator James Ohrenschall
Senator Dallas Harris
Senator James A. Settelmeyer
Senator Ira Hansen
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Assemblywoman Elaine Marzola, Assembly District No. 21
Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nicolas Anthony, Counsel
Sally Ramm, Committee Secretary

OTHERS PRESENT:

Kendra Bertschy, Public Defender's Office, Washoe County
Steve Grammas, Las Vegas Police Protective Association
John Piro, Public Defender's Office, Clark County
Jared Luke, City of North Las Vegas
Christine Saunders, Progressive Leadership Alliance of Nevada
Quentin Savwoir, Make It Work Nevada
A'Esha Goins

Nick Shepack, American Civil Liberties Union of Nevada
DaShun Jackson, Director of Children's Safety and Welfare Policy, Children's Advocacy Alliance
Brigid Duffy, Chief, Juvenile Division, Office of the District Attorney, Clark County
Patrice Saunders
Tamara Savors, Make It Work Nevada
Ashley Dodson
Dagny Stapleton, Executive Director, Nevada Association of Counties
Amber Howell, Director, Human Services Agency, Washoe County
Nancy M. Saitta
Megan Lucey, Washoe County Human Services Agency
Kimberly Surratt, Nevada Justice Association
Gillian Block, Nevada Coalition of Legal Service Providers
Justin Watkins, Nevada Justice Association
Kristina Kleist, Probate and Trust Section, State Bar of Nevada
Mark Knobel, Probate and Trust Section, State Bar of Nevada
Alan Freer, Probate and Trust Section, State Bar of Nevada
Robert Telles, Clark County Public Administrator

CHAIR SCHEIBLE:
The Senate Judiciary hearing for today is now open. We will start with Assembly Bill (A.B.) 157.

ASSEMBLY BILL 157 (1st Reprint): Authorizes a person who is the victim of certain discriminatory conduct relating to an incident involving a peace officer to bring a civil action under certain circumstances. (BDR 3-227)

ASSEMBLYWOMAN DANIELE MONROE-MORENO (Assembly District No. 1):
I am here to present for your consideration A.B. 157, which addresses a serious problem that has recently gained national recognition—the discriminatory use of false 911 emergency calls against certain groups, especially against communities of color. This bill represents an effort to call attention to the problem and provide a legal remedy to victims of discriminatory practices.

As is pointed out on page 2, lines 1 through 8 of the bill, recent national news stories and the television show "20/20" drew the attention of state legislatures across the Nation to false 911 calls. These occur when the intent is to harass a person or a group of persons because of their inherent characteristics, including

their race, gender, nationality, religion, disability or sexual orientation. Many specific occurrences went viral on social media. Incidents like the birdwatcher in Central Park asking the woman to put her dog on a leash were recorded and gained national attention during a weekly news cycle. As is so often the case, this media exposure led to more of these types of cases coming to light.

I think we can all agree that, at the very least, these occurrences represent a misuse of our law enforcement personnel, wasting their time and taxpayers' resources. More importantly, they cause serious mental and even, at times, physical harm to the victims of such incidences. The sense of harm extends to the community as a whole. To communities of color and our judicial and law enforcement communities, the social harm of such an incident splits the fabric of our society. It contributes to the distrust of government in general and law enforcement specifically.

We need to find ways to rebuild trust, and A.B. 157 can be a part of that effort. I would like to note that similar bills have already been passed in New York, Oregon and Washington. In fact, the sponsor of the Oregon bill, a fellow Legislator, encountered the type of incident this bill will address.

Oregon State Representative Janelle Bynum, who is Black, walks her district as most of us walk ours—going door to door to talk to voters. As she goes along, she takes notes on her phone about her constituents' concerns. Two years ago, a resident of a mostly White neighborhood in her district found Representative Burnell's campaigning so suspicious that she called the police. I think you can see why we need to address this matter.

I will review the highlights of the bill as it was amended in the Assembly. This bill aims to address deliberate, false and discriminatory reports by providing the victims of such reports with a specific and targeted remedy. The form of this remedy is the ability to bring a civil action for damages against the persons making reports.

Section 1 of the bill defines the circumstances under which a person can bring an action against the person who made the false report without reasonable cause. The report must show that the person making the call knowingly caused a peace officer to arrive at a location and to contact the person being discriminated against.

Section 1, subsection 1 identifies the discriminatory conduct and defines the specific type of harm and outcomes that would allow the civil action under the bill. Subsection 2 lists the potential forms of damages along with the cost and fees that may be recovered by the prevailing party. The remaining sections authorize the actions under the bill even if related criminal convictions already exist and provide for other technical matters.

I spent almost 30 years working in law enforcement as a corrections officer, and I personally saw how people can try to use the police as a weapon. As law enforcement officers, our time is precious. We are there to serve and protect and to address real crimes being committed in our society. Tying our police officers' hands on these frivolous calls has to come to an end. I urge the Committee to pass A.B. 157.

SENATOR HARRIS:
I thought a lot about addressing these types of calls, and you have come up with a great solution that includes civil remedies. Thank you.

CHAIR SCHEIBLE:
I think this is a fantastic idea, and I look forward to continue working through the bill.

KENDRA BERTSCHY (Public Defender's Office, Washoe County):
The Washoe County Public Defender's Office supports A.B. 157. We believe this is an important bill which helps aid our community members to feel safer and also ensure that our community is not using law enforcement as weapons. We urge your support.

STEVE GRAMMAS (Las Vegas Police Protective Association):
This bill helps to quell false calls requiring us to respond. If somebody calls the police and makes a claim, we have to respond. Most times when this involves false claims, it aggravates us as much as it does the person we were called to investigate. This bill is going to reduce the number of false calls. The victims of these calls will usually take issue with us instead of the person who called us. Perhaps this bill will keep us from the need to respond to calls like this. The Las Vegas Police Protective Association supports this bill.

JOHN PIRO (Public Defender's Office, Clark County):
There is a need for action to combat frivolous and malicious complaints to the police. We urge the Committee's support of A.B. 157.

JARED LUKE (City of North Las Vegas):
We support A.B. 157 and denounce all harassment, especially harassment of a racial nature. It has no place in society. This bill is a good step in the right direction. It opens up conversation and hopefully will evolve into other programs that protect those who need protection.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):
We have seen the recent viral videos and cases over the decades, including cases like that of Emmett Till. They result from false accusations leading to great harm and even death, especially for people of color. This bill creates a process of accountability for people who use the police with bad intentions. We ask for your support.

QUENTIN SAVWOIR (Make It Work Nevada):
We support A.B. 157. I echo many of the sentiments that my colleagues express. We are facing a time of racial reckoning where frivolous calls to police on the basis of skin color can no longer be acceptable. We urge bipartisan support for A.B. 157.

SENATOR SETTELMEYER:
I agree with the concept of the bill. Assemblywoman Monroe-Moreno, I think we should take this further. If someone takes your constitutional rights, if you prevail in an action against anyone on a constitutional issue under 42 USC Section 1983, Civil Action for Deprivation of Rights, attorney's fees are awarded. Why not have a State civil rights bill like the federal bill that if you violate the Nevada Constitution, attorney's fees are awarded as a generalized concept?

ASSEMBLYWOMAN MONROE-MORENO:
I did not think of that, but I will look into this idea. In drafting the bill, I wanted to make sure that the cost for the time and effort from law enforcement and first responders would be taken care of as well. If you hit people in the pocketbook, they think twice about what they do. Our jails are full. We do not need more people in the jails. But that is a concept that I will look into.

CHAIR SCHEIBLE:
There is a clause in section 1, subsection 2, paragraph (c) which says that a person bringing a civil action may recover costs and reasonable attorney's fees incurred in bringing the action. I do not know if you are thinking of something more specific or if that would address your question.

SENATOR SETTELMEYER:
I am concerned that this would only pertain to *Nevada Revised Statutes* (NRS) 41, whereas I think it should be broad-based to all laws.

NICOLAS ANTHONY (Counsel):
Senator Settelmeyer is correct. The federal 1983 action does include a clause for attorney's fees if you prevail. I am not sure that Nevada has that same provision. I will look into it, but I am unaware that we have that provision.

CHAIR SCHEIBLE:
I now close the hearing on A.B. 157 and open the hearing on A.B. 158.

ASSEMBLY BILL 158: Revises the penalties for certain offenses involving alcohol or cannabis. (BDR 15-360)

ASSEMBLYWOMAN DANIELE MONROE-MORENO (Assembly District No. 1):
I bring this bill to you at the request of a community member and activist. We have seen far too many young people, especially Black and Brown youth in our communities, receiving a criminal record long before they get an opportunity to get their first job. On November 8, 2016, Nevada residents voted and passed Question 2 making up to one ounce of recreational marijuana officially legal for persons 21 years or older and medical marijuana for persons 18 years or older.

As a Legislative Body, we have worked hard to create legislation to reflect the changes in our laws following the passage of Question 2 as it pertains to adults. However, for our youth, our statutes have not changed. Those found in possession of one ounce or less of marijuana or possession of alcohol remain at risk of a possible criminal misdemeanor offense. This would be punishable by imprisonment for not more than six months or by a fine of not more than $1,000 or both. It is the intent of the bill's sponsor and requestor to revise the penalties for these offenses to reflect more graduated penalties targeted to address the conduct. This would ensure we are not interjecting children into the criminal justice system cycle.

The language of A.B. 158 as it was originally introduced did not meet our original intent. There has been a collective effort and, as the Chair mentioned, the group has been working on amended language up until earlier today. There have been conversations and diligent work between the public defenders' offices Statewide, the district attorneys' offices Statewide and community stakeholders who have worked to amend the language to meet the original intent.

Joining me virtually is A'Esha Goins who founded Black Joy Consulting to explain why this bill is important and the intent of this legislation. Ms. Bertschy from Washoe County Public Defender's Office will walk you through the proposed amendment of the bill which was submitted by the Clark County District Attorney's Office (Exhibit B).

A'ESHA GOINS:
A youth magazine interviewed incarcerated youth and asked, "How does it feel to lose your freedom?" Elizabeth, aged 18, answered:

> It hurts more than any kind of punch, slap, anything that was ever done to me. Having my freedom taken away is the worst thing that ever happened to me. It's not the fact I'm in jail that I'm scared. For a while I didn't know what was going to happen to me or when I was gonna get out. I felt the whole world was going on without me, and I was stuck. I have a little sister born after I started running away and I don't even know her. My family came out twice this year. You get special visits for half an hour. For the past year, I've seen someone I know from the outside for like an hour.

The magazine also asked, "What do you think your parents could have done that would have helped?"

> If my mom had set me aside and talked to me and asked me what is it that you want? That would have helped.

They also asked, "How do you feel compared to the average teen?"

> I feel totally different like a different species. I feel older, cuz I've seen so much.

On August 5, 2020, in the Thirty-second Special Session, the Assembly and the Senate unanimously passed Senate Concurrent Resolution 1 of the 32nd Special Session, a proclamation that declared racism a public health crisis. The first paragraph reads:

> WHEREAS, As stated by Maya Angelou: Prejudice is a burden that confuses the past, threatens the future and renders the present inaccessible, and
>
> WHEREAS, Systemic racism and structures of racial discrimination create generational poverty, and perpetuate debilitating economic, educational and health hardships and disproportionally affect people of color, causing the single most profound economic and social challenge facing Nevada; and ... .

The 2019 Clark County Juvenile Justice Services statistical report stated that possession of marijuana and/or alcohol is the No. 2 most referred offense to the juvenile justice system and three years after legalization, battery is No. 1. The report also said that 1,009 youths were referred for possession of marijuana and 803 of them were Black and Hispanic.

The intent of A.B. 158 is to ensure fairness and equality in the justice system as it relates to possession of alcohol, tobacco and cannabis for juveniles and persons under 21 and to offer a second chance to those youth who may have just made a bad choice at the time. I urge the Committee to pass this bill for my son and all my community nieces and nephews.

MS. BERTSCHY:
The proposed amendment to A.B. 158 submitted by the Clark County District Attorney's Office Exhibit B, complies with what the parties agreed to during the hearing in the Assembly during this Session. The amendment encompasses offenses related to alcohol and marijuana committed by people aged 18 to 21 and mirrors NRS 62B.320, subsection 1, paragraph (h) regarding underage possession of tobacco products. The goal is to ensure that our criminal sanctions are proportional to the offense committed and to promote equity in the justice system. Section 1 specifically refers to possession of alcohol offenses by youths aged 18 to 21.

Sections 1, 3 and 4 change the structure of the penalties. For a first offense, the penalty could be attending a victim impact panel, outlined in NRS 484C.530. For a second offense, the penalty is not more than 100 hours of counseling or participation in an educational or other treatment program. Someone aged 18 to 21 who continues to engage in this conduct for a third or subsequent offense will be punished as provided in NRS 193.150, which is the punishment for all misdemeanors. These penalties give judicial officers more discretion to determine what is really happening and to ensure the most appropriate penalty is being used.

Section 1, subsection 3—an important part of the proposed amendment—allows for automatic sealing of records when the person aged 18 to 21 has completed the penalty as the court ordered. This is different from normal misdemeanors where the person petitions to have records sealed, but it ensures that the youths' records are cleared when they have completed what the court ordered them to do.

Section 2.2 of the proposed amendment applies to youth under the age of 18 and conforms the offenses in section 2.2 with the current statute by making the violations of possession of a small amount of marijuana or alcohol to a child in need of supervision (CHINS) offense. This prevents the offense from being a delinquent child offense and keeps the case in juvenile court.

Section 2.2 amends NRS 62B.320 giving exclusive jurisdiction over juvenile cases involving alcohol and marijuana, preventing them from becoming delinquency cases.

Section 2.6 states a peace officer can issue a citation to a juvenile for the consumption or possession of alcohol or one ounce of marijuana in the same manner as a traffic citation. The officer will give the juvenile a copy of the citation. He or she will not take the child into physical custody for the violation unless the officer believes there is an imminent risk to the safety of the child and the safety of the child will not be ensured by placing him or her with an adult relative, a treatment facility or a shelter for children who run away. The shelter must not be used for the protection of children under NRS 432B. The shelters that are not appropriate would be Child Haven in Las Vegas, Kids' Kottage in Washoe County and Austin's House in Carson City.

If the child refuses to sign the citation, the officer will not take the child into physical custody. The receipt of the citation by the child will be considered personal service of the notice to appear in court. The officer will make an attempt to notify a parent or guardian of the child, but the inability to contact them is not a reason to take the child into custody.

Section 2.8 sets out the framework of penalties for people under the age of 18 who are deemed a child in need of supervision and not deemed a delinquent child. They are like the penalties in section 2 for first and second offenses, with allowances for younger children. The purpose of this section is to make the law the same in all counties of the State.

ASSEMBLYWOMAN MONROE-MORENO:
Collectively, we can agree that children are children. As adults we have an obligation to meet them where they are. We must hold them accountable for their actions while giving them all the necessary tools they need to learn from mistakes they make. We also must assist them into becoming healthy, productive, successful adults. I urge your support for A.B. 158.

SENATOR OHRENSCHALL:
This bill will help a lot of kids not get caught up in the system if a child is on juvenile probation or youth parole and is found with a small amount of marijuana. They will get the guidance they need to be in court or a detention facility. Suppose a child is on juvenile probation or youth parole and is found with a small amount of marijuana. Do you think that, under this legislation, this will still qualify as a violation of juvenile probation or youth parole, or will this change that?

ASSEMBLYWOMAN MONROE-MORENO:
I am not an attorney. However, if there were conditions of parole or probation and one of them was that the child could not use alcohol or marijuana, being caught with the possession of it would be a violation.

SENATOR PICKARD:
Someone made a reference to marijuana having been legalized for those under 21 years of age.

MS. BERTSCHY:
If that was stated, it is not the case. It is legalized for those over the age of 21. It is not legal for those under the age of 21, which is why we are bringing forward this bill. To be clear, this does not decriminalize the use of marijuana for those under the age of 21; it provides for different penalties and punishments.

SENATOR PICKARD:
In Clark County, there is a drug diversion program for youth. They serve people up to the age of 18. There is also a separate diversion program for people over the age of 18. This seems to replace the program for those 18 to 21. If it does not replace the diversion program, where does that fit in? One of the things that I have been taught is that the best time to catch the youth is on their first exposure. If we cannot get them into a diversion program and ultimately into a treatment program, but we allow them to continue to use, they are far more likely to continue and end up in the adult justice system. How does this intersect with the diversion programs?

ASSEMBLYWOMAN MONROE-MORENO:
We were children, and we made mistakes. We are also parents, and not every child that lights a joint or takes a drink is going to become addicted to a substance. Sometimes what that child needs is to have the mother intercede. Had I been in trouble as a child, and you told me you were going to call the police or call your mom, I would have said, "Please call the police; do not call my mom."

Children need guidance from the parent or the grandparent, aunt or uncle, instead of putting them into a diversion program. Putting a child in that program is truly the first step into the system, and not every child needs to be in the system. If we catch them early, we can stop behavior, but stopping that behavior might be the conversation letting mom and dad know what is happening. I see the diversion program getting involved because we have utilized the first and second instances.

SENATOR PICKARD:
What I hear you saying is this is a progressive system—first offense, second offense. In section 1, subsection 2, first offense brings 24 hours of community services; second offense brings 100 hours of counseling or education. It sounds like we are replacing the diversion courts because that is

what they do. The third offense brings the penalty for misdemeanors as provided in NRS 193.150, so it seems to bypass the diversion program.

MS. BERTSCHY:
I want to make sure we are talking about the same section. We are specifically looking at section 1, those who are aged 18 to 21. You are correct for the first and second offense, as the person would not be going to the diversionary treatment program because the person would be participating in other options. Studies show that if someone is placed into the criminal system in terms of giving the person too many different requirements including supervision, there is more likelihood of increasing the risk of recidivism. In this bill, the carrot-and-stick approach is being used. This could become a more serious offense, so the judge can significantly scold the person on the record: "If you continue down this path, this is what will happen to you."

Unfortunately, some of the diversionary programs do not exist in other jurisdictions, especially in rural Nevada. Also, we do not have Clark County's Harbor Program in Washoe County or the rural jurisdictions. We tried to make sure that we are not replacing that program to be utilized for subsequent offenses, but that should not be in statute because it is not available to all jurisdictions.

SENATOR PICKARD:
I would like to see those studies. My wife has been a Hearing Master, now a District Court Judge, and she ran the juvenile drug court in Clark County for many years. I see these studies come from various organizations that suggest the opposite. What I recall is that once a child has been picked up and had a petition filed, they do not have the kind of mothers that you and I had that made sure we did not get into this stuff. They end up in need of more than just a good solid scolding, knowing that things could get worse. I am in the same boat. My mom would not have tolerated this thing from us. Those are not the kids that generally find themselves in the juvenile justice program. If they do, at the end of the day, we are talking about a more global approach. I would like to see the studies that say early intervention is not effective; it incentivizes or makes it worse for them. I still do not understand—we go through first and second tier so diversion court is after the third tier?

MS. BERTSCHY:
I was not saying that not providing intervention is appropriate to stop behavior. What we are saying is that requiring too many requirements and too much supervision is what the studies have shown will lead to a potential increase in recidivism. I do not understand your comments about diversionary programs.

SENATOR PICKARD:
It is because I do not understand. If this is not replacing the diversionary program, I do not see where that comes in. As I understand it, NRS 193.150 is postdiversion. I am looking at section 1, but section 2 has similar language. If we are going straight from 100 hours of counseling to a delinquency matter under NRS 193.150, I am under the impression we have skipped the diversion. We had to do a statutory authorization for the diversion. I do not want to undo that accidentally.

CHAIR SCHEIBLE:
I am going to interject here because I have information you do not have. Brigid Duffy is also on the telephone. You can decide if you want to continue answering the Senator's questions or if you want to turn this over to Ms. Duffy.

MS. BERTSCHY:
Since we are dealing with the 18 to 21-year olds, you are correct. For the first and second offenses, they would not be looking at a diversionary program. For the third or subsequent, that is where the diversionary program could be utilized.

SENATOR PICKARD:
Do we apply this differently for alcohol and marijuana use, or is it any controlled substance?

MS. BERTSCHY:
This bill is specifically for alcohol and marijuana. If somebody is using a controlled substance that is not one of those; this would not apply.

SENATOR SETTELMEYER:
With alcohol, sometimes there is a different level of offense based on the amount of alcohol detected in a person's body. Would that be consistent? Sometimes if the person is just slightly over the limit, if you go to the hospital,

the treatment is a different system of detox, whereas marijuana does not have the same addiction level as alcohol.

MS. BERTSCHY:
For someone over the age of 18 who is just possessing alcohol, there is not a difference in the treatment. If the person is driving while under the influence of alcohol or marijuana, then there is a difference in the penalties.

SENATOR SETTELMEYER:
I thought there is a difference if a minor is found at a party and is drinking. I thought there are different levels of charges attached to the amount of diversion ordered, and they potentially changed based on how intoxicated the minor was. If he or she was found to be incapacitated, it brought a different level of offense.

MS. BERTSCHY:
To my knowledge, it does not. Regarding the juvenile offenses, the decision is made taking into consideration whether the person can be at liberty and just receive a citation or whether it leads to the imminent risk of harm where law enforcement does need to take appropriate measures.

SENATOR OHRENSCHALL:
As I read section 2.8, I understand that if a child does have a first offense involving alcohol or marijuana, the child would not be in the juvenile delinquency system, but would be a child in need of supervision, and referred to a probation officer for informal supervision. The probation officer can recommend drug counseling or a class about the dangers of drug and alcohol abuse. I see the same thing with the second offense. If there is a third offense involving marijuana or alcohol, the child is adjudicated a delinquent child in the delinquency system. Then the therapeutic court, such as a drug court for juveniles in the delinquency system or any other diversionary programs that the judge would think appropriate, would still be applicable. I do not see this as replacing the therapeutic courts for juveniles but providing more diversion before they get there. I think this would help divert kids but still allow them to get drug treatment and therapy without having to quickly be fast-tracked into the delinquency system.

MS. BERTSCHY:
Just to make sure the intention is clear, that is our understanding as well. In Washoe County, individuals who are under the age of 18 committing these offenses are not being placed in juvenile delinquency courts right now. They have informal probation, which is why it is important for us to not have every offense be subject to juvenile delinquency courts.

CHAIR SCHEIBLE:
I am curious about the process concerning the controlled substances, whether alcohol or marijuana are confiscated, and if they are impounded.

MS. BERTSCHY:
We are all looking back to see if a law enforcement person who is in the building has the answer. I do not know. I have seen different things just from reading probable cause sheets. Therefore, I do not know if there is a specific policy and procedure. That is not in this bill nor am I aware of it in the statutes regarding these offenses. That could be something that is specific to policy and procedure.

ASSEMBLYWOMAN MONROE-MORENO:
I think that would be in the standard operating procedures for each agency.

CHAIR SCHEIBLE:
The reason I am asking is in adult court, I have seen citations for marijuana or having alcohol in a public place. If an officer is approaching a group of underage people who have a full case of beer, do they have the discretion to issue a citation, take the case of beer and throw it away? How much discretion do police or other peace officers have when they are interacting with juveniles or people 18 to 21 years of age, and is it different from what they experience with adults?

MS. BERTSCHY:
This is not in my area of expertise.

CHAIR SCHEIBLE:
This does not change my support for the bill. I am trying to understand so as we continue to move forward, in this Session and future sessions, we make good policy to help out kids.

NICK SHEPACK (American Civil Liberties Union of Nevada):
If we are serious about broader criminal justice reform, and creating a safer and more just Nevada, we must start with how we approach juvenile justice. Leaders such as Assemblywoman Monroe-Moreno understand this, and we are lucky to have her here in this State. After decades of punitive tough-on-crime responses to youth crime and misbehavior, there has been a noticeable shift in recent years surrounding juvenile justice issues in the United States. Assembly Bill 158 seeks to continue that shift.

The criminalization of marijuana and alcohol use has not benefitted Nevada's youth. A growing body of literature shows the first arrest actually increases the likelihood of continued contact with the criminal justice system. The policy of the State should not be to apply significant and brutal criminal penalties to age appropriate behavior such as juvenile experimentation with drugs and alcohol. This is not to say that the State should not address these issues, as early drug and alcohol use can have significant negative effects on both development and success. The State, however, should address behavioral health issues as what they are—health issues. By ensuring that children are not arrested when they are caught for these things, unless they are in immediate danger, we reduce both trauma and recidivism.

While we would like to see all criminal penalties removed from activities related to behavioral health issues, this bill prioritizes direct services and small penalties for Nevada's youth, which is the right way to approach this issue. The war on drugs has failed our communities, especially communities of color, and this bill will have a great impact on all Nevada youth and be especially positive for Nevada's youth of color. We urge you to support A.B. 158.

DASHUN JACKSON (Director of Children's Safety and Welfare Policy, Children's Advocacy Alliance):
We support A.B. 158. This bill will ensure that youth is treated as youth. As Assemblywoman Daniele Monroe-Moreno stated, we were all once youth. We all made mistakes. This bill gives youth the opportunity to fix and mend the mistakes they made. We all are at fault at some point, but this bill is great.

MR. SAVWOIR:
We organize Black women and Black families around economic justice, racial justice and reproductive justice issues. As such, we support A.B. 158. This bill is a measure that meets the current moment—a reckoning of racial inequity that

is seemingly baked into the fabric of our Country. Nationally, we have continued to see Black and Brown youth killed at the hands of law enforcement while locally critics of A.B. 158 are consistently trying to keep our youth—our young people, and our future incarcerated because of cannabis or alcohol possession. By now, you know the status quo disproportionately impacts Black and Brown youth, wrapping them up in a justice system that derails their possibilities and potential.

During the summer of 2020, this body unanimously declared racism to be a public health crisis. This declaration brought our community some assurance that our elected leaders understood the weight of the moment we are in. This bill is an opportunity for you all to rise to that moment. It is an opportunity for us to show some compassion for our youth and ensure that they have a second chance before throwing them away by way of the justice system.

Assembly Bill 158 is a community-driven policy that will keep our young people from being unfairly targeted by a justice system that is often more harmful than helpful to the young people who look like me and the families who work alongside. We urge bipartisan support for A.B. 158.

MR. LUKE:
I cannot add anything that you folks have not discussed or has not been stated in support testimony. I want to show support behind A.B. 158. I have kids and I talk to them all the time about how, "I remember what it is like being a kid, but you have never been an adult or a parent." Oftentimes, we forget what it was like being a kid. We forget about the social pressure and peer pressure. We forget that a lot of the kids we ran with possibly did not have a great family structure—parents at home that helped teach them and were home during the day. Maybe these kids do not have the coping mechanisms they need. This is a thoughtful and creative approach to alternatives to immediate arrest, and if this bill passes, it will show great results in corrective behaviors with youth.

MR. PIRO:
I urge your support for this measure.

BRIGID DUFFY (Chief, Juvenile Division, Office of the District Attorney, Clark County):
I am appearing today on behalf of the Nevada District Attorneys Association in support of A.B. 158. I have some highlights I have to hit based on questions

from this Committee to our Proposed Amendment Exhibit B. First, the amended bill makes statutory the process that is already in place in Clark County. I got a little ahead of myself and was excited about being able to put Clark County's process into statute. Then I remembered that I am part of a much larger State.

As Ms. Bertschy mentioned, there is a lack of diversionary programs in other parts of our State that we are fortunate in Clark County to have. I also agree that our major referrals to the juvenile justice system in Clark County are marijuana possession and battery, with battery No. 1 and marijuana possession No. 2. I want to make clear, the Office of the District Attorney does not file those cases. They are referrals, and "referral" is a term of art in juvenile justice. It could mean a couple of things: The child received a citation or a ticket, or it could mean an arrest. Most, if not all, of those referrals are citations and not arrests. The District Attorney is not in the habit of filing first time referrals for marijuana and battery charges. In fact, those two charges accounted for 78 percent of all the referrals to our Harbor Program in Clark County in 2020. Those two charges are also our No. 1 diverted charges out of the juvenile justice system.

I also want to make clear that the section about the NRS 432B shelters being excluded as a possible placement is because we do not want to start another problem for the family, such as opening up a Department of Family Services or a Child Protective Services (CPS) case. Any time a child is left at the doorstep by law enforcement or any other party at an abuse-neglect shelter covered by NRS 432B, it mandates that CPS open up an investigation in order to receive that child. We do not want to stop one problem to start another for a family. That is why it is important that we exclude those shelters as a drop-off point if a parent cannot be notified.

I want to address Senator Pickard's concerns. I do not see that for the juvenile system this will impact our use of diversionary programs. Our first offense CHINS would go to a Harbor Program. As Senator Ohrenschall pointed out, the second offense would still be able to use diversionary programs specifically because we reference NRS 62C.200, which allows for the use of cognitive training, and human development classes under 62E.220, which are skill-building classes. All of those things we currently use will be statutorily required for the second offense if this bill is passed.

SENATOR PICKARD:
As I expressed before, my concern is I do not want to hamper the ability to do the diversion programs since they have proven to be successful up to this point. I was under the impression that was occurring around the State, so apparently not. It is my understanding, at least in Clark County, from what Ms. Duffy just said that because of the reference to NRS 62C and because the second tier gives Juvenile Probation the ability to determine what the appropriate next step is, we will not undermine the existing diversionary programs. Is that correct?

MS. DUFFY:
Yes, that is correct. It would be business as usual in Clark County, and it will be mandated so that it is sustainable. The diversionary programs can be used by the probation department.

PATRICE SAUNDERS:
It is important. I have a 14-year-old that just got in trouble for having a vape pen in Wisconsin last week, and they gave him a $125 fine. It will be on his record until he is 18 years of age. I am glad that in Nevada, people are making efforts to make adjustments so that our youth will not have their lives ruined based on their record. I am in support of this bill so our youth will be able to have a normal life that will not be filled with penalties for small amounts of cannabis possession.

TAMARA SAVORS (Make It Work Nevada):
We support this bill. It will remove any chances for our youth to have a misdemeanor related to marijuana or alcohol possession. When young people are taken to jail, all they are doing is sitting in a 4-foot by 4-foot cell and learning nothing productive. Their time is not being used productively. This will provide the ability for them to not have a record. If the youth is either Black or Brown, having a record has different consequences to them than to someone who is not Black or Brown. This legislation will require juveniles to perform community service and allow them to be productive and engaged in our communities. This will be a good use of the State's money. We urge bipartisan support for A.B. 158.

MS. SAUNDERS:
I echo the substance of those who spoke before me and urge your support of this legislation.

ASHLEY DODSON:
I support A.B. 158. I am the cofounder and president of Cannabis Equity and Inclusion Committee. I am a licensed social worker and mental health specialist.

I have worked with juveniles who have been mandated by the courts after being detained for marijuana possession. Many of them were using marijuana as a coping mechanism due to family issues, behavior issues in school, depression, lack of support and others. As a once-curious youth, and now mother of five, I know that most children need compassion, someone to talk to, guidance and opportunity to be educated and have an opportunity for prevention of substance abuse. I support A.B. 158 to end the criminalization of juveniles under the age of 21 whose first offense is being charged with cannabis possession.

Nevada has alternative resources, advocates and programs available to prevent the school-to-prison pipeline and decrease recidivism by providing rehabilitation and education, especially for Black and Brown youth who have been disenfranchised by the war on drugs. Juvenile detention can be mentally and emotionally harmful for children. Children who have been physically and emotionally separated from their families have higher rates of depression and suicidal ideation. According to recent literature from the Justice Policy Institute report of youth corrections, detention has profoundly negative effects on young people's mental and physical well-being, education and employment. One psychologist found that one-third of diagnoses of depression in incarcerated youth occurred after they began their incarceration. Poor mental health and the conditions of confinement together conspire to make it more likely that incarcerated teens will engage in suicide or self-harm.

With A.B. 158, opportunities for positive outcomes for our youth will be visible and will decrease the negative impacts on detained children who are still in their developmental stages. Education is key. By giving our youth another chance to improve behavior, be properly assessed for mental health conditions and be appropriately assigned to community service, we will decrease the likelihood of juvenile possession convictions. Research shows that behavior of young people is associated with biological immaturity of the brain. Hence, they are not operating at the capacities of an adult, so in turn they should not be charged criminally for the first offense. Not only is this costly, it is traumatic for the youth being charged and often detained.

Alternatives to incarceration will mean public safety will be maintained; job and vocational skills will be developed; rehabilitation and treatment will promote mental wellness; with all leading to successful reintegration into the community. Economic relief will also be brought to taxpayers with restorative justice, as it is more costly to house youth in detention centers and facilities. Research done by the University of Southern California suggests that youth programs in California showed exponential drops in recidivism. As a result, tens of thousands of dollars for each case are saved. The federal government provides programs which advocate for restorative justice models as better than traditional punitive systems. Such funds can be awarded to Nevada with program models seeking to train and educate youth to become thriving, law-abiding citizens and refrain from reentering into the correctional system.

Now is the time for Nevada to support our youth by providing the resources they need and acknowledging cannabis offenses as an opportunity to provide education and empathy. It is socially unjust to continue to see children and youth disproportionally affected by the war on drugs and impacted negatively due to the lack of empathy, cultural competency, diversity and inclusion. Communities progress forward when justice is distinguished as a basic right. This legislation provides an opportunity for Nevada to save our youth. I urge you to support A.B. 158 as amended.

SENATOR PICKARD:
In section 4, subsection 5, if a person under the age of 21 fulfills the terms and conditions imposed for a violation of subsection 4, which would include the first offense, the court shall, without a hearing, order all documents sealed. My concern is this: How do we get to a second offense if nobody knows about the first offense? Are the records sealed only to the public, but the judicial system knows about it? How does this work?

MS. BERTSCHY:
If you do not mind, I would be happy to have a further detailed discussion offline. This was something we discussed at great length with the District Attorney's Office and is agreed-upon information. It is my understanding that the district attorney would be able to still have information pertaining to this issue. I would be happy to have a conversation with you and the district attorneys.

SENATOR PICKARD:
I think this is something we need to look at carefully before we move this bill. I agree with the intention—to get the kids the help they need, particularly if we can get them into Harbor Programs all over the State—is important. If we cannot see the first offense, it will be Ground Hog Day. We will have multiple first offenses and the kids are not going to get the help they need.

CHAIR SCHEIBLE:
That also assumes the second offense is occurring after all of the conditions have been met for the first offense. In my practice, what I often see is that the second arrest occurs while the first offense is pending. Those individuals would be treated under the conditions of section 1, subsection 1, paragraph (c).

MS. BERTSCHY:
I received a text from the Nevada Attorneys for Criminal Justice asking me to put their testimony of support on the record.

ASSEMBLYWOMAN MONROE-MORENO:
Chair Scheible, you asked a question about what happens with the items that are involved in the arrest. Speaking with one of my law enforcement colleagues, I found it is different with each department. However, liquids cannot always be impounded, so they are disposed of. With the other items, they would be impounded.

CHAIR SCHEIBLE:
The hearing on A.B. 158 is now closed. I now open the hearing on A.B. 33.

ASSEMBLY BILL 33 (1st Reprint): Authorizes the establishment of paternity in proceedings concerning the protection of children. (BDR 11-436)

DAGNY STAPLETON (Executive Director, Nevada Association of Counties):
We have three presenters. Amber Howell, Director of the Washoe County Human Services Agency, which oversees the child welfare system in Washoe County, is familiar with child welfare and dependency cases and the process for determining paternity. To help us answer technical or legal questions, representing Washoe County is Megan Lucey, who will walk us through the bill. We are honored to have retired Nevada Supreme Court Justice Nancy Saitta to share her perspective on this issue.

AMBER HOWELL (Director, Human Services Agency, Washoe County):
The greatest gift we can give a child is closure through a forever home after they have been abused and neglected or experiencing things we wish they had not. No child or parent should have to mourn the loss of each other, but when it does occur, we need to not prolong those steps. The quicker we can remove the anxiety from a child who is worrying about where he or she will be placed for the last time and free from instability, the quicker the child can close that chapter and begin anew.

Children in the foster care system endure unanticipated trauma from the unknown. Not having a secure placement or confidence that the adults in their lives will stay there and be there forever impacts all of the facets of the child's life. Children should not grow up in our system. As soon as we realize that reunification with a parent is not an option, we need to move quickly and have a seamless process to find the next best option. Federal time frames and court processes and establishment of paternity all take several months. We want to have it as seamless as possible so we can shorten that time. Think about a child's clock. For adults, we think of a lifetime as 70 to 80 years, but a child spends very little time being a child. A child may be in the foster care system for 4 to 5 years before being adopted. That is one-fourth of their childhood the child cannot get back. We need to preserve as many good years of childhood as we can.

This legislation addresses the legal process that takes place when kids are in foster care and adoption is the next path. In dependency hearings, in order to ensure that the biological parentage of a child is resolved, the process for determining paternity must occur. This bill ensures that this process is uniform and efficient across the State by making the existing process in NRS 126 also used in child welfare cases.

In summary, no parents wake up one day and decide to be absent or to not provide for their children, but this does occur. An alternative plan for children that is safe, loving and secure must be provided. All children long for parents to guide them, teach them and love them unconditionally. When biological parents cannot meet these tasks, a process that streamlines the myriad of events that occur in the child welfare system is necessary.

NANCY M. SAITTA:
I want to make it very clear. This bill does not eliminate establishment of parentage. It simply streamlines the process. This means that we are taking from one section of our statutory scheme, moving it to another and expediting a more efficient way to free our children for a permanent home. Today happens to be my birthday. Although the decades do not matter, there is not a birthday that goes by that I do not thank the people who gave me the privilege of being adopted into their home. The process we put before you today in A.B. 33, simply allows that short window of time for our young kids to get into the permanent home that, from my perspective and the years that I have worked in this area, will make all the difference in their lives. We are not eliminating the necessity to contact, identify and to have present all parents. We are making it a more efficient process by combining the two areas of law into one and allowing the adoption process to move forward. This surely makes a difference in so many lives. My adoption, for me and my parents, made all the difference in the world.

MEGAN LUCEY (Washoe County Human Services Agency):
We will be looking at the first reprint of A.B. 33.

Section 12, subsection 1 mirrors the definition of parentage from NRS 126 to NRS 432B. This is being done to streamline cases in dependency court when it is necessary to establish parentage.

Section 12.3, subsection 1, adds language that allows the jurisdiction of the district court to attach parentage establishments to the dependency cases. Again, this is a process that can be done now through the district courts, but this streamlines it so it can be done in one action with one judge and not use additional judicial resources and time with the children, especially those in foster care or under guardianship placement.

Section 12.7, subsection 6 allows the orders under NRS 432B to become final orders of the court, which allows them to be appealed and is necessary for the rights of the parents. This also allows these parentage orders, once entered into by the district court, be published and not subject to the confidentiality provisions of NRS 432B. This is important because all of the orders and proceedings held within NRS 432B dependency actions are subject to confidentiality provisions, given the sensitive nature and the impact that they have on minor children throughout the State. We are now allowing these orders

that establish parentage to not be confidential for the purposes of changing birth certificates or other various uses of these orders, so they are not in violation of the established confidentiality provisions.

SENATOR PICKARD:
Justice Saitta, you have dealt with jurisdiction questions on a regular basis. I am under the impression that these terminations are made in the Eighth Judicial District Court all the time under the idea that the family court, of which dependency is a division, has plenary power. In fact, their jurisdictional limits are greater than the other district courts in that they can hear family matters where the other district courts cannot. Do they not already have the authority under NRS 126 to establish paternity in order to make the determinations necessary under NRS 432B? I do not believe they are currently doing that in a separate action. I think they are doing it as a matter of course, maybe out of necessity, as opposed to statutory authorization. Can you educate me on the jurisdictional question?

MS. SAITTA:
All this bill does is to make the process that you describe clear and simple. Yes, the jurisdiction attaches to the Family Division of the Eighth Judicial District Court. We are taking these provisions from one section and adding them to another so that it is clear for all of our judicial officers to know that they can put the paternity action within the NRS 432B action. It has nothing to do with establishing or enlarging their jurisdiction. Obviously, our judges are doing it right; they are just doing it in a truncated process and this will make it easier. That is the request of this bill.

SENATOR PICKARD:
In my discussions with Ms. Stapleton and others prior to this, it is my understanding this is not happening, at least, the districts outside the Eighth Judicial District are not currently interpreting this in this manner. Do I understand correctly that what this is going to do is to standardize the practice everywhere so that we do not have separate actions in districts where there is not a family court? Does this standardize for everyone what the Eighth Judicial District has been doing for some time?

MS. SAITTA:
Yes. It will establish a clear pathway to creating a quicker permanency process throughout the State.

SENATOR OHRENSCHALL:
If this passes with this streamlining, if there is a putative father who is not listed on the birth certificate, perhaps who was not aware of the child, would this reduce the amount of time the person would have to establish paternity, or would the person still have the rights that he or she currently have?

MS. LUCEY:
No, this would not reduce the opportunity for any putative fathers or mothers to step in and establish a right to responsibilities they may have for a particular child.

MS. BERTSCHY:
My Office also represents the parents in these NRS 432B cases. We worked with the sponsors on the bills, and I appreciate the additional protections they put in place to ensure that the due process and appellate rights are maintained with the revised version. As to Senator Ohrenschall's questions, this bill improves the timing. I represented a child who had a putative, not a funding, parent. This bill would have made the placement of a child into a home much faster. We support this legislation.

KIMBERLY SURRATT (Nevada Justice Association):
The Nevada Justice Association supports A.B. 33. As you know, parentage is often the focus of my testimony at the Legislature. This bill is a good example of minor changes that can be made to give Nevada children the consistency they deserve. They also deserve judicial consistency and efficiency within the family law arena. We often fail to do that because we also fail to make minor changes to make that happen. This is a minor change with a big impact.

GILLIAN BLOCK (Nevada Coalition of Legal Service Providers):
We also support A.B. 33 because this bill will bring Statewide uniformity and concurrency to our statutes. We know that delays in permanency are bad for children, and A.B. 33 will help reduce the waits.

CHAIR SCHEIBLE:
I now close the hearing on A.B. 33 and open the hearing on A.B. 112.

ASSEMBLY BILL 112: Revises provisions relating to compromised claims of a minor. (BDR 3-806)

ASSEMBLYWOMAN ELAINE MARZOLA (Assembly District No. 21):
This bill revises provisions related to compromise of a claim of a minor. A compromise of a minor's claim refers to a settlement of a disputed claim for money damages in a personal injury claim on behalf of a minor under the age of 18. In Nevada, if a minor is injured in an accident caused by the negligence of another person, just like an adult, the minor is entitled to seek recovery from the negligent party. Existing law states that when a minor has a disputed claim against a third party, the parent or guardian of that minor has the right to compromise the claim by filing a verified petition with the court. If the court approves the compromise of the claim, the guardian or the parent must establish a blocked savings account.

The revisions in A.B. 112 simplifies and streamlines the compromise compensation process by allowing parents or guardians to more readily use funds from the small claims awards for the benefit and best interest of the child. At this time, I will turn the presentation over to former Nevada Assemblyman Justin Watkins to present specific details of the bill and to answer any technical questions.

JUSTIN WATKINS (Nevada Justice Association):
While this is a minor change to the statutes, it is an important policy change to make. The current process does not address the size of the case or the value attached. Whether the personal injury was caused by an automobile accident, a slip-and-fall or a fight at school, regardless of the reason for the injury, the parent cannot do anything with the settlement money or even settle the claim without the court's approval. The court approval must be done through a petition to the court. The court can attach some requirements to the settlement, such as yearly accounting for the funds, what bank can be used for the deposit and additional court filings when the child becomes 18.

The first part of this bill seeks to update the language. The language says "a depository account," and while the courts have interpreted that reasonably in recent sessions, the idea is that we want to give as much flexibility to the courts as possible. They can then allow that money to be put into a financial institution or an investment account. This is important today, when savings accounts are earning less than one percent, to try to grow the money in a more favorable way for the minor.

The second change is more substantive. It is a discretionary tool that we are providing to the courts that when the amount of the compromise is smaller—the threshold we have chosen in this bill is $2,500—the court, in its discretion, can award that money directly to the parent for the use and benefit of the child without any further reporting or depository into a blocked trust account being required. It is not something the court has to do, it is just another tool in the toolbox for the courts to do.

The reason we tried to address this issue is because of incidents that have low dollar value; for example, a car accident, and the child seems fine. Most parents will take their child to be medically checked out. The children may go to the emergency room with an adult. Their bills may be $400 or $500, and an ultimate resolution in that claim may be about $1,000. The money going to the minor after the medical bills are paid is a couple hundred dollars. In that situation, because of all the hurdles that must be cleared by the parent and the lawyer, there are a number of instances that these claims get passed over. They are not made because the system is too arduous.

If the party could file a petition with the court and get the money to the parent, then close the case with no yearly accounting, resulting also in the lawyer not having to close the case when the child is 18 years of age, I think you will see all the appropriate claims should be paid.

SENATOR PICKARD:
My first reaction to this was "of course." This makes sense. I have experienced these both as a personal injury lawyer and as a family lawyer, but that experience makes me want this to be clear on the record. Often, what will happen, is the parents will be entrusted with the blocked account where nobody can pilfer the money. If the money is not in a blocked account, we often see these things abused where one parent will take the entirety of the account. This creates an issue in family court.

As I read this, it says "is compliant with any terms and conditions ordered by the court." What I am envisioning is a situation where the parents are together, everything is fine, they put the money into an account and then they break up. Now they are going to be fighting over it even if it is not much money. Typically, it is the civil court that will retain jurisdiction to oversee the account. How do we then process this in divorce or custody situations? Does the district court have authority to take jurisdiction over this account and order its

disposition, or does the civil court that issued the order retain jurisdiction? How do we resolve that?

MR. WATKINS:
I am assuming from your question that we are taking into account that this is a settlement amount of under $2,500. The court has utilized its discretion, which we are granting in this bill, to give that money directly to the parents for the benefit and use of the child. In that situation, I believe jurisdiction would end upon that order. In current law, it has to go into a blocked trust account which must be maintained and accounted for with the court until the court orders the release. If the courts were to use this portion of the bill that we are giving them as a tool, then their jurisdiction would end there. If then, there is a break up, and the parents are in family court, and they bring forward those funds as assets that need to be divided, then I believe it would be the family court's jurisdiction to do so.

However, I would not anticipate that to be something that would be accounted for. In the petition being utilized under this provision, the court would see what the parents planned to do with the money, whatever small dollar amount it was. If the settlement amount goes to the minor, and if the minor needs or wants something that the family would not otherwise be able to afford, then the money would have been spent and there would be nothing left for the family court to divide. If there is still an accounting of those funds, then it would go to the family court to divide unless the civil court retained jurisdiction by requiring an accounting until the age of maturity.

SENATOR PICKARD:
So you assume the facts I had in my head, and I had envisioned that we would have a multiparty situation where the kids were involved in an automobile accident and this would be a compromise for the child, but it is part of a bigger settlement issue. I had a situation with a blocked account where one of the parents tried to take it, so this is fresh in my head. I guess my concern was when it says the court, at its discretion, may close the case. Just because it has closed the case, it does not mean it has lost jurisdiction. What you are describing sounds reasonable. If the court has divested itself of jurisdiction and closed the case, then it would be an asset divided by the family court.

MS. SURRATT:
I am in favor of A.B. 112.

CHAIR SCHEIBLE:
I now close the hearing on A.B. 112 and open the hearing on A.B. 318.

ASSEMBLY BILL 318 (1st Reprint): Revises various provisions relating to estates. (BDR 3-805)

ASSEMBLYWOMAN ELAINE MARZOLA (Assembly District No. 21):
With me are the cochairs of the Legislative Committee of the Probate and Trust Section of the Nevada State Bar, Alan Freer and Mark Knobel. Also, here to present this bill is Kristina Kleist. Some general background information: Nevada is at the forefront of estate and trust law. To a large extent, this is because the Legislature has consistently enacted cutting-edge provisions and updates. The bill before you today updates our law and is a result of collaborative work with the Legislative Committee of the Probate and Trust Section of the Nevada State Bar.

Assembly Bill 318 primarily amends NRS Title 12, Wills and Estates of Deceased Persons, and NRS Title 13, Guardianships, Conservatorships, Trusts. This bill intends to clarify the laws relating to trusts and estates, adopt new laws to remain current as one of the top three leading jurisdictions for trusts and estates in the United States, and streamline the probate and trust administration process while including safeguards to prevent abuse. Also, it will provide additional laws in response to the Covid-19 pandemic with respect to electronic wills and trusts and the remote execution of such documents. At this time, I will ask Kristina Kleist to continue the presentation.

KRISTINA KLEIST (Probate and Trust Section, State Bar of Nevada):
Here is some background on the process of the Legislative Committee of the Probate and Trust Section, State Bar of Nevada. The Committee works internally to develop the proposed language based on caselaw changes and other necessary updates. Once the Probate and Trust Section has vetted the proposed language, it is then circulated to the other sections of the State Bar for their review and comment on potential impacts to other areas of the law. Once each section has vetted the language, it is then sent to the State Bar Board of Governors for approval to be submitted as a State Bar Probate and Trust Section bill.

The language submitted by the Section to the Legislative Counsel Bureau for this bill had no objections from the other sections and was unanimously

approved by the Board of Governors to be submitted by the Section. The importance of sharing this process with you is to highlight the level of vetting of the language before you. In the past several years, Nevada has taken on an international prominence as a desirable jurisdiction for establishing and administering trusts.

Mr. Knobel and Mr. Freer will walk you through A.B. 318 in which they have provided their Executive Summary (Exhibit C).

MARK KNOBEL (Probate and Trust Section, State Bar of Nevada):
Sections 1 and 2 of the bill provides declaratory relief for parties to a power of attorney. Section 3 is an exemption for fiduciaries who take temporary possession of real property for making real property disclosures. Sections 4 through 16 and section 34 relate to electronic wills, and simplify and clarify the electronic will statute, provide for remote execution of trusts and wills and provide a clear procedure where an electronic will can be made into a certified paper copy.

Section 15 of the amendment was requested by the Clark County Public Administrator, Robert Telles, to enable his office to verify fact when potential abuse is suspected. Section 16 provides privacy for individuals who are attorneys or accountants serving as a fiduciary so they can use their business addresses rather than their residential addresses. Section 20 provides that a disinterested cofiduciary can serve, and sections 21 and 26 amend the administrator power provisions to streamline and update Nevada law for when a personal representative may act on behalf of a business. This is happening more frequently, and with the different types of business entities, our laws have not addressed it in quite some time. Alan Freer can explain our Executive Summary further Exhibit C.

ALAN FREER (Probate and Trust Section, State Bar of Nevada):
In line with the objectives of the bill, I will address the latter half of A.B. 318. With respect to the concept of streamlined administration, this continues to be a mandate for the Probate and Trust Section as it seeks to follow the mandate provided by this Legislature in NRS 132.010 to ensure speedy and efficient administration of estates with the least cost to the parties.

Section 27 permits the court discretion to set aside an estate from a probate proceeding where a pour-over will situation has occurred, thereby reducing the

costs to the parties to administer the estate. Likewise, changes in sections 40 and 41 of the bill regarding notice to creditors bring procedures in line with estate proceedings, thereby eliminating confusion and the dichotomy between an estate and a trust proceeding.

With respect to clarifications relating to law and estates, the Committee clarified a number of statutes, and I would like to take a minute to build on Assemblywoman Marzola's comments. Since Nevada is a national top three jurisdiction, our statutes become a topic of national discussion among practitioners in the area. Due to that, many times areas in the law needing potential clarifications are brought to light from those national discussions regarding Nevada law. In this Legislative Session, we have sections 28 and 29 clarifying statutory fees and circumstances when an attorney is an independent attorney for the statutory presumption of undue influence. Additionally, an example of this clarification process appears in section 30 which amends the nomination of guardianship statutes.

Multiple laws permit the nomination of a guardian in various documents, but the guardianship statutes do not reference them. This amendment recognizes all of the current statutory methods of nomination of a guardian and harmonizes those to avoid potential conflicts of interest among the statutes. Section 42 clarifies circumstances when a divorced parent may represent a minor child by authorizing that the custodial parent or a parent of joint custody has that status.

With respect to tax law changes, section 31 proposes a new statutory amendment to NRS 163 based on an IRS revenue ruling that permitted trusts to include a power by the trustee to reimburse the settlor for tax payments without triggering any onerous federal tax liability provisions, so this statute incorporates that power consistent with the IRS ruling.

Lastly, with respect to streamlining administration and protections, protections are needed. Section 35 is one example of protection for beneficiaries. It requires a court order to divide or combine a trust if such power was not expressed and granted by the original settlor of the trust and likewise, Mr. Knobel mentioned that we worked with Mr. Telles regarding some concerns he has seen in his practice. In that regard, we included an additional group of amendments drafted in conjunction with the Clark County Public Administrator to curb potential abuse. Examples of those occur in sections 44 through 46. They afford various notices, standing and informational amendments to permit county public

administrators to protect estates especially in instances where there is an intestate estate that is being administered by someone other than a spouse, heir or next of kin.

Section 47 retroactively applies the changes in section 4 to insure that wills and trusts that were executed electronically during the pandemic in conformity with sections 4 through 16 will also have the same force and effect as if they were executed after the normal October 1 effective date.

SENATOR PICKARD:
My concern is as we look at section 4, when we are talking about audio-video, I assume we are talking about a true full audio-video, not the colloquial term meaning either/or. We cannot set these things up over telephone, but we can by means of video. I am looking at section 9 and how electronic wills and trusts can be revoked. Once we have converted a certified original paper will—section 14—and section 34 where custodians are converting a certified paper original trust, how do we make sure that this does not come from someone who has motive to change the terms to their favor? How is it that we can revoke an electronic version, since one of the hallmarks is the ability to revoke at will? Unlike a paper copy, they cannot tear it up. Once it has been converted to a certified paper original, how do we ensure the person that is trying to cheat has not created the certified paper original for the purposes circumventing the settlor's intentions?

MR. FREER:
With respect to revocation of the document, section 14, subsections 2 and 9 provide for the two ways an electronic will can be revoked: first, either by executing a new will, electronic or paper, that revokes prior wills and second, by having the will printed out as a certified copy and then doing a physical revocation similar to what is done with an ordinary printed will. A third way to revoke the will would be an electronic revocation by contacting the qualified custodian and direct that the revocation occur. There is also section 9, subsection 2, which is existing law, and allows any other revocation implied by law to revoke wills.

More importantly, how is fraud prevented with respect to electronic wills and trusts? Electronic wills and trusts are held and identified so they cannot be changed while they are in the electronic format. Each page has a barcode and source code. The electronic trust document is coded similarly. When the

documents are converted to a certified original, they will continue to bear the electronic codes. That is the first way to prevent fraud with electronic wills and trusts. The second way is in section 12 of the bill and in NRS 133.320. A qualified custodian cannot be an heir, beneficiary or devisee of an electronic will. It is similar to the requirements of having a witness to a will. The person who holds the electronic document must be disinterested at the time they keep and present the electronic will.

MR. KNOBEL:
Revocation is the same as a written will—prepare a new will and the previous will, electronic or hard copy, is no longer valid.

SENATOR PICKARD:
In terms of the qualifications of the qualified custodian, that has not significantly changed, I assume. I do not see any changes. The custodian is all-important. Have we changed that anywhere?

MR. FREER:
No, that has not changed in the probate statutes. In practice, most qualified custodians are law firms and done in connection with electronic notaries who provide additional protections. Electronic notaries are required to maintain additional records.

ROBERT TELLES (Clark County Public Administrator):
I am in support of A.B. 318. We have seen serious concerns with certain transactions and cases in the probate court where there is equity that might have gone to family members and others being washed away by third parties. It may not be illegal, but it is a concern that the families are protected. I appreciate everyone's work on this bill and ask your consideration for this bill.

CHAIR SCHEIBLE:
That concludes our hearing on A.B. 318. Meeting is adjourned at 3:25 p.m.

RESPECTFULLY SUBMITTED:

Sally Ramm,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Begins on Page**	**Witness / Entity**	**Description**
	A	1		Agenda
A.B. 158	B	7	Assemblywoman Daniele Monroe-Moreno	Brigid Duffy / Clark County District Attorney's Office Proposed Amendment
A.B. 158	B	8	Kendra Bertschy / Public Defender's Office, Washoe County	Brigid Duffy / Clark County District Attorney's Office Proposed Amendment
A.B. 158	B	17	Brigid Duffy / Clark County District Attorney's Office	Proposed Amendment
A.B. 318	C	30	Kristina Kleist / State Bar of Nevada	Mark Knobel and Alan Freer / State Bar of Nevada Executive Summary
A.B. 318	C	31	Mark Knobel and Alan Freer / State Bar of Nevada	Executive Summary