MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-first Session
May 12, 2021

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 11:02 a.m. on Wednesday, May 12, 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:

Senator Dina Neal, Senatorial District No. 4
Assemblyman Edgar Flores, Assembly District No. 28
Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nicolas Anthony, Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

John Piro, Office of the Public Defender, Clark County
Kendra Bertschy, Office of the Public Defender, Washoe County
Jim Hoffman, Nevada Attorneys for Criminal Justice
Dani Baranowski, Vice President, Chamber of Cannabis
Shelby Stanley, Chamber of Cannabis
Tessa Laxalt, Nevada Trucking Association
Margaret Presley, Chamber of Cannabis

Scot Rutledge, Chamber of Cannabis
Nicole Buffong, Western Regional Director, Minorities for Medical Marijuana; Chamber of Cannabis
Cristina Ulman, President, Chamber of Cannabis
Asia Duncan
John Jones, Nevada District Attorneys Association; Office of the District Attorney, Clark County
Dwaine McCuistion, Fatal Detail, Las Vegas Metropolitan Police Department
Andrew MacKay, Executive Director, Nevada Franchised Auto Dealers Association
Sean Sever, Deputy Administrator, Department of Motor Vehicles
Annette Magnus, Executive Director, Battle Born Progress
Christine Saunders, Progressive Leadership Alliance of Nevada
Joseph Lankowski
Holly Welborn, American Civil Liberties Union of Nevada
Jagada Chambers
Courtney Jones
Marcus Lopez, Americans for Prosperity Nevada
Leslie Turner
Keith Lee, Nevada Judges of Limited Jurisdiction
Stephen Bishop, Ely No. 1 Township Justice Court, White Pine County; President, Nevada Judges of Limited Jurisdiction
Randall Soderquist, Elko Township Justice Court, Department A, Elko County; Municipal Court Judge, Department A, City of Elko
Richard Glasson, Tahoe Township Justice Court, Douglas County
Jennifer Noble, Nevada District Attorneys Association
Kelly Crompton, City of Las Vegas
Jamie Rodriguez, Washoe County
Lori Matheus, Canal Township Justice Court, Lyon County; Senior Municipal Court Judge, City of Fernley
Elizabeth Anderlik, Assistant City Attorney, City of Henderson
Mary Walker, Carson City, Douglas and Storey Counties
Lisa Chamlee, Pahrump Township Justice Court, Department A, Nye County
Marc Ebel, Aladdin Bail Bonds; Sureties Seaview
Chuck Callaway, Las Vegas Metropolitan Police Department
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Mike Cathcart, City of Henderson
Misti Grimmer, Nevada Resort Association
Corey Solferino, Washoe County Sheriff's Office

CHAIR SCHEIBLE:
We now open the hearing on Assembly Bill (A.B.) 400.

ASSEMBLY BILL 400 (1st Reprint): Revises provisions relating to prohibited acts concerning the use of marijuana. (BDR 43-485)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):
Impaired drivers who endanger our communities should not be behind the steering wheel. Nothing in A.B. 400 prevents identifying and prosecuting impaired drivers. It asks that the Committee consider the science when identifying exactly what constitutes impaired driving. You have a support statement and per se levels chart (Exhibit B) for A.B. 400 from Paul Armentano, Deputy Director, National Organization for the Reform of Marijuana Laws.

In every state, it is illegal to drive with a blood alcohol concentration (BAC) of 0.08 or higher. The higher the BAC, the more the impairment. This is a well-established fact based on a scientific relationship developed over decades of research. The 0.08 BAC is the basis of DUI prosecutions. Generally, a standard drink equals 0.02, and the average person metabolizes one drink per hour. Drink five drinks in an hour, and your BAC will be 0.08—and you will probably be impaired.

Nevada's cannabis DUI law uses a per se, or presumed illegal, standard. For arrestees with cannabis in their system, the per se standard is 2 nanograms (ng) per milliliter of active THC or 5 ng or more of a certain cannabis metabolite. This means drivers have little or no ability to defend themselves against DUI charges if their blood level exceeds those numbers. Your only defense is "I wasn't the driver" or "The blood tested wasn't mine." You cannot argue you were not impaired due to tolerance or history of heavy usage of cannabis, even for medical purposes. If your blood exceeds those levels, you will be found guilty of DUI. A cannabis user with a higher body mass index can have a blood level of 2 ng more than 48 hours after consumption. I have submitted a chart (Exhibit C) of the serum analysis of THC.

In Nevada, drivers may be arrested and charged with DUI if they are under the influence of prescription drugs such as Xanax or hydrocortone. There are no per se levels in the *Nevada Revised Statutes* (NRS), so prosecutors must prove impairment beyond a reasonable doubt. I have seen such prosecutions when I practiced criminal law. My client was charged with DUI based on Xanax even

though her prescription was lawful. Law enforcers are trained to recognize impairment due to drug use. They interact with drivers, conduct field sobriety tests and observe erratic driving. Nothing in A.B. 400 would change that or preclude an officer's ability to take blood samples.

I chaired the 2019-2020 Interim Committee to Conduct an Interim Study of Issues Relating to Driving Under the Influence of Marijuana. Dr. Norbert Kaminski, a commissioner of Michigan's Impaired Driving Safety Commission and pharmacology and toxicology professor at Michigan State University, joined our meeting. The Commission was directed to establish a per se standard (Exhibit D) for the state of Michigan. After extensive research, commissioners concluded there is no blood-level value for THC to determine impairment. The report, Exhibit D, found, due to the initial rapid dissemination of THC followed by a long terminal elimination phase, blood plasma concentrations of THC are indicative of exposure but not a reliable indicator of whether an individual is impaired.

> Therefore, because there is a poor correlation between THC bodily content and driving impairment, the Commission recommends against the establishment of a threshold of THC bodily content for determining driving impairment and instead recommends the use of a roadside sobriety test(s) to determine whether a driver is impaired.

That is functionally what A.B. 400 would provide.

There are multiple studies corroborating that finding, including one (Exhibit E) by the National Highway Traffic Safety Administration (NHTSA). The AAA Foundation for Traffic Safety stated, "A per se limit is arbitrary and unsupported by science." The NHTSA said, "The poor correlation of THC level in the blood or oral fluid with impairment precludes using THC blood or oral fluid levels as an indicator of driving impairment." In 2019, the Congressional Research Service report "Marijuana Use and Highway Safety" determined "Research studies have been unable to consistently correlate levels of marijuana consumption, or THC in a person's body and levels of impairment." A California Highway Patrol task force concluded, "Drugs affect people differently depending on many variables. A *per se* limit for drugs, other than ethanol should not be enacted at this time as current scientific research does not support it." Dr. Marilyn Huestis of the U.S. National Institute on Drug Abuse said, "There is no one blood or oral fluid

concentration that can differentiate impaired or not impaired." It is not like we need to say, "Oh, let's do some more research and give you an answer." The research is there.

There are three main provisions of A.B. 400. Sections 1 through 3, 5 through 8 and 10 through 16 remove the per se level in the law and make conforming changes. Sections 10, 11 and 14 remove the mandatory 12-hour custody hold of a person arrested with more than the per se limit. Section 17 makes a conforming change to workers' compensation NRS, which are tied to the per se levels. Employer groups were concerned about having a strict rule with regard to compensation claims. The 2 ng threshold for active THC is retained as the point at which an employer can effectively deny a compensation claim.

I have a proposed amendment (Exhibit F) to ensure we do not go too far too quickly in this regulation area. It proposes to keep the 2 ng of THC level in DUI cases resulting in death or substantial bodily harm. It would create a rebuttable presumption: the defendant would be presumed to be impaired but could provide his or her or an expert's testimony indicating he or she was not impaired due to prior usage and history. The proposed amendment, Exhibit F, strikes the right balance between due process and public safety.

The Department of Motor Vehicles (DMV) had concerns about commercial drivers. If you have a commercial driver's license (CDL), you cannot have any THC in your system, no matter the level. The DMV will provide an amendment to A.B. 400.

Opponents of A.B. 400 will say we need the per se standard to prosecute and hold drivers accountable. That strict approach facilitates prosecution but is not based on science. Nothing in the bill would prevent prosecutors from charging and securing convictions against drivers impaired from cannabis. The consequence of not fixing NRS 484C.110 is impaired drivers might not be detected because the THC may not actually be in their blood yet when pulled over. Only drivers with higher blood levels—such as medical users—will not be impaired but convicted if the per se limit law stands. Passage of A.B. 400 is an issue of fairness, equity and enhanced public safety.

SENATOR SETTELMEYER:
Are you saying there may be a proposed amendment from DMV so truckers would not lose their CDLs? Will everyone still be tested? As for the workers'

compensation claims, would you entertain an amendment including a death or bodily harm element?

ASSEMBLYMAN YEAGER:
Employer groups are happy with how the bill provides for denying workers' compensation claims. The DMV concerns do not pertain to DUI, which is a different topic. Federal law prohibits any illegal substance in commercial drivers' systems. If a driver violates that law, DMV can suspend his or her CDL.

In southern Nevada, there are a lot of accidents resulting in substantial bodily harm or death. The decision to keep the per se limit in those provisions was correct. Still, an arrested person can plead, "Wait a second: I know I was over the limit, but here's my individual circumstance. I'm not impaired." That would be new to the law. Officers would still be able to take blood and conduct field sobriety tests, which provide a number for your blood level for a judge and jury to consider. The bill changes their ability to rely solely on that number as to conclusive proof of guilt.

SENATOR HARRIS:
It was quite clear in the testimony we heard before the 2019-2020 Interim Committee to Conduct an Interim Study of Issues Relating to Driving Under the Influence of Marijuana, was blood analysis was not the best way to determine impairment.

SENATOR OHRENSCHALL:
Years ago, I met attorney John Watkins, who spent decades litigating cannabis per se limits all the way to the Nevada Supreme Court. He teaches other lawyers about the intricate aspects of DUI at trials and appellate levels of law in Nevada. Assembly Bill 400 could prevent years wasted on illegitimate cannabis cases.

SENATOR PICKARD:
Rather than eliminate the per se limit altogether, why would we not create a rebuttable presumption similar to that proposed for commercial drivers? This is an issue of shifting the burden. The criminal standard is still beyond a reasonable doubt, and by removing it, we blur the evidentiary standard. Why not say, "Okay, we can demonstrate that you have the substance in your system. Now, it's up to you to show you weren't impaired"? Officers stop people driving erratically without knowing the cause.

ASSEMBLYMAN YEAGER:
That is a policy consideration. The only substances beside alcohol with a per se limit are schedule I controlled substances. The impairment numbers in NRS 484C.110 went into effect after passage of S.B. No. 481 of the 70th Session. In 1999, cannabis was entirely illegal in the State. Legislators chose the lowest quantifying, testable number—between 2 ng and 5 ng—given the science at that time.

My thought about A.B. 400 is, given legal medical and recreational cannabis, we should treat it more like a medication than a schedule 1 controlled substance, even though it still is federally prohibited. There are no levels for prescription drugs; the labels warn people not to operate heavy machinery.

SENATOR PICKARD:
When medical marijuana was legalized and we changed the per se limit, it was based on science.

CHAIR SCHEIBLE:
I am confused as to how you intend A.B. 400 to function. The majority of DUIs prosecuted in Nevada are alcohol-related. The two ways to prove DUI suspects have a BAC of more than 0.06 within two hours of operating the vehicle: the impairment theory or the driver's behavior demonstrates impairment and alcohol is in his or her system. This is opposed to the driver having a medical episode or something like that.

If A.B 400 passes in its amended form, let us say, as an officer, I see someone driving 20 miles per hour on the freeway and drifting. I pull the driver over, get him or her out of the car and do the field sobriety test. I have probable cause of impairment because I am trained to hypothesize the type of impairment. I perform an initial breathalyzer test and a blood test.

Let us say the driver registers 0.0 on the breathalyzer. He or she is not impaired by alcohol, but I still suspect impairment. I can either get a consensual blood draw or go through the warrant process to get a draw and arrest the driver for suspicion of DUI.

If the blood test results indicate the driver had used LSD, methamphetamine or cocaine above the per se level, the case is clear. All the prosecutor has to say is, "Look, he had cocaine above the per se level," just as if he had blown an

0.08 on the breathalyzer. If that does not happen, and the blood indicates a small amount of cocaine or any amount of cannabis, prosecutors utilize the intoxication impairment theory. A hearing or trial is held or perhaps the prosecutor and public defender negotiate with, "Look, this person was impaired because they were driving slow, drifting, their eyes were glassy and bloodshot." The presence of cannabis in the bloodstream would provide evidence of intoxication. All attendant circumstances come out in the trial. Is this the way A.B. 400 should be analyzed?

ASSEMBLYMAN YEAGER:
That is precisely how the bill would work. The arresting officer will almost certainly have a body camera, which would constitute more evidence. Someone could say, "Well, I'm a heavy pot user. I wasn't really impaired. They're exaggerating." However, a video could indicate impairment. At trial, not only the fact there was some kind of substance in the blood would be considered, the blood level number would also be admissible. Such a misdemeanor would be weighed by a judge or jury. It is rare impaired drivers only have one intoxicant in their systems.

The way cannabis is metabolized is different based on the individual. If I start smoking a joint in this room, my THC blood level will spike. I would not really be impaired for probably 30 minutes to an hour. After my first toke, I would exceed the per se level but not be impaired. Likewise, if I were to take an edible there is no blood spike; in some people, there is almost no THC level rise. We are trying to say, "If you're impaired, you're impaired. You're not gonna get off the hook because you're under the numbers, and you're not necessarily gonna get convicted because you're over the numbers." The bill will give defendants the chance to make their cases.

CHAIR SCHEIBLE:
People will be protected by changing the per se level law. If a DUI case is considered borderline, and the driver tests positive for THC, the bill would force the prosecutor to prove the driver's swerving or speeding were excessive and, once out of the car, the driver was behaving abnormally. If a person who has taken a hit off a joint was truly unimpaired and just happened to be speeding, the bill would protect him or her. In court, he or she could say:

> Look, yes, I had THC in my system. Yeah, I was speeding, but I was not impaired, and here are the reasons. Why, here are my seven other speeding tickets that show I'm usually speeding.

Is that correct?

ASSEMBLYMAN YEAGER:
Yes. People do not often get the benefit of the doubt in such instances because bad driving is common and not tolerated. However, if a person really does have a defense, A.B. 400 will permit him or her to mount it. The trial results are correct 99.9 percent of the time.

JOHN PIRO (Office of the Public Defender, Clark County):
By NHTSA standards, there is no correlation between the per se ng level and impairment. Assembly Bill 400 would take us to an evidence-based solution in NRS.

KENDRA BERTSCHY (Office of the Public Defender, Washoe County):
Driving under the influence of any substance is a concern. That the State is relying on laws proven to be not based on science is detrimental to our communities. Impaired people who actively cause danger are a public safety hazard, but that is not what the per se limit is suggesting. If you are above that limit, you are guilty, regardless of whether there is a safety risk. Driving under the influence is detrimental because it is an enhanceable offense. It can impact lives, jobs and futures. We need to ensure we are capturing those truly impaired drivers.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):
The Nevada Attorneys for Criminal Justice supports A.B. 400. The science is clear: per se limits are not tied to intoxication and impairment. We are prosecuting and imprisoning people for DUI who are not impaired by marijuana. This is unjust and untenable, especially in a state with legal cannabis. There is no scientific reason to punish those who are not breaking the law nor scientific justification for existing law.

DANI BARANOWSKI (Vice President, Chamber of Cannabis):
As a contributing employee of the cannabis industry that creates substantial tax revenue, I support A.B. 400. I work in cultivation. I do not want to be nervous and feel like I need to be dishonest with officers if I am pulled over or afraid

I could be unfairly determined to be intoxicated when I am simply coming or going to work. Removing the per se limit will protect the security, future and jobs of the cannabis industry.

SHELBY STANLEY (Chamber of Cannabis):
I support Assembly Bill 400 for the same reasons as Ms. Baranowski.

TESSA LAXALT (Nevada Trucking Association):
The Nevada Trucking Association supports A.B. 400 with the proposed amendment from the DMV. The safety of our drivers is paramount, and making sure CDL holders are not impaired ensures their safety and that of the public. A good day for us is when everyone makes it home at day's end. Federal law has zero tolerance for CDL holders. In 2020, the Federal Motor Carrier Safety Administration began its Drug and Alcohol Clearinghouse. It is an online database to give employers real-time access to information about violations of drug and alcohol violations by CDL holders.

The DMV amendment clarifies CDL holders may not be under the influence of any prohibited substance. It retains the ability of the Nevada Highway Patrol and DMV to take enforcement actions.

MARGARET PRESLEY (Chamber of Cannabis):
I support A.B. 400. The per se limit of 2 ng is outdated. Field sobriety tests should be used to detect cannabis, much like with prescription drugs, when it comes to DUI prosecutions.

SCOT RUTLEDGE (Chamber of Cannabis):
You have my statement of support (Exhibit G) for A.B. 400 on behalf of the Chamber of Cannabis.

NICOLE BUFFONG (Western Regional Director, Minorities for Medical Marijuana; Chamber of Cannabis):
As a cannabis patient, it is important to me that we address whether drivers are impaired at the time of infraction. Field sobriety tests should be used, not the per se limit, because cannabis patients registered by the State continually violate that standard. That does not mean we are impaired.

CRISTINA ULMAN (President, Chamber of Cannabis):
Assembly Bill 400 will provide justice for cannabis consumers in our State.

ASIA DUNCAN:
I support A.B. 400 because our DUI laws are outdated.

JOHN JONES (Nevada District Attorneys Association):
The Nevada District Attorneys Association opposes A.B. 400. The conceptual amendment, Exhibit F, proposed by Assemblyman Yeager improves the bill but does not address all of our concerns. Law enforcement supported A.B. No. 135 of the 79th Session, which aligned cannabis NRS with metabolites showing recent usage. That bill amended NRS to conform to science, resulting in no impact on public safety. We do not feel the same about A.B. 400.

While it is true THC does not affect people in the same way as alcohol, it is a psychoactive drug. According to the National Institutes of Health, marijuana significantly impairs judgment, motor coordination and reaction time. Studies have found a direct correlation between THC blood concentrations and impaired driving. The NHTSA recommends in Exhibit E, an effective method for training law enforcement personnel, including drug-recognition experts, to detect those under the influence of marijuana is essential. Assembly Bill 400 has no mechanism or funding for such training. Most officers are not trained as "drug-recognition experts." Defense attorneys will have a field day cross-examining officers about their lack of high-level drug-recognition training.

Going to an impairment theory will require more officer training and resources for experts in prosecuting agencies. Neither is contemplated in A.B. 400. The proposed amendment, Exhibit F, should apply presumption to all DUI marijuana cases, not just those involving substantial bodily injury and death.

DWAINE MCCUISTION (Fatal Detail, Las Vegas Metropolitan Police Department):
I have been with the LVMPD for 15 years and been a fatal detective for 3 years. I am a drug-recognition expert and certified court expert witness. I have extensive knowledge of marijuana-impaired driving and witnessed destruction and death by impaired drivers. Often, all we have is the driver's blood to guide us in explaining the collision and convicting the person. Without a per se limit, obtaining justice would be more difficult or impossible.

In a lecture, Dr. Huestis spoke about the topic of per se limits. She said a limit of 1 ng is too low and 5 ng is too high. I agree; most of my marijuana offenders have had between 3 ng and 5 ng. In the proposed amendment, Exhibit F, the rebuttable presumption does not address 11-hydroxy THC, which is

impairing. Cannabis is one of the psychoactive drugs, which are impairing by nature and impede safe driving. The presumptive rebuttal should be applied to all DUIs involving marijuana, not just to those involving substantial bodily harm and death.

As a fatal detective, I have seen more dead Nevada citizens because of marijuana-impaired drivers than anyone testifying today. Assembly Bill 400 does not target the marijuana community; it targets the impaired-driver community and protects the innocents on our roadways. If my family members were killed by a marijuana-impaired driver, would the law bring justice to the guilty and free the innocent?

ANDREW MACKAY (Executive Director, Nevada Franchised Auto Dealers Association):
The Nevada Franchised Auto Dealers Association is neutral on section 17 of A.B. 400, which provides for workers' compensation issues.

SEAN SEVER (Deputy Administrator, Department of Motor Vehicles):
The DMV is neutral on A.B. 400. The Federal Motor Carrier Safety Administration states:

> Marijuana, including a mixture or preparation containing marijuana, continues to be classified as a Schedule 1 controlled substance by the Drug Enforcement Administration. Under the Federal Motor Carrier Safety Regulations, a person is not physically qualified to drive a commercial motor vehicle if he or she uses any Schedule 1 controlled substance.

A commercial driver may not use marijuana, even if it is recommended by a licensed medical practitioner. State legalization of marijuana does not modify the application of U.S. Department of Transportation drug testing. The amendment to be submitted by DMV recognizes commercial vehicle drivers are held to a higher standard when it comes to alcohol and controlled substances in their urine or testing from 0.04 to 0.08 BAC.

CHAIR SCHEIBLE:
We will close the hearing on A.B. 400 and open the hearing on A.B. 424.

ASSEMBLY BILL 424 (1st Reprint): Revises provisions relating to pretrial release. (BDR 14-374)

SENATOR DALLAS HARRIS (Senatorial District No. 11):
I chaired the 2019-2020 Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases. Assembly Bill 424 is the culmination of the Committee's effort.

SENATOR DINA NEAL (Senatorial District No. 4):
I brought forward the bail reform bill A.B. No. 136 of the 79th Session. The bill vetoed by Governor Brian Sandoval was a watered-down version simply allowing defendants to have unsecured bonds after misdemeanor arrests. I sponsored A.B. No. 125 of the 80th Session involving bail reform, but it did not get out of the Senate.

The last significant bail reform conversation was S.B. No. 154 of the 60th Session sponsored by my father, Senator Joe Neal. The discussion was about releases on suspects' own recognizance (OR), but the bill died in committee. In the Sixty-first Session, Senator Sue Wagner debated the same releases during discussion of S.B. No. 310 of the 61st Session. A study of the Reno City Jail found white prisoners were more readily released than minority prisoners. There was no standard for minorities' OR release. Although minorities made up 25.7 percent of Nevada's population in 1981, only 7.8 percent of minority prisoners were released on OR or bail bonds. Only 11.8 percent of minorities made bond, and 16.8 percent made cash bail. Senate Bill No. 310 of the 61st Session was amended by Senator William Raggio to reflect standards we still debate today.

I asked myself, why is the issue of bail reform so contentious, and why is opposition continuing? In 1964, Attorney General Robert Kennedy and President Lyndon B. Johnson considered unsecured bonds as part of a national movement to reform bail. Their intent was to reform pretrial incarceration and unnecessary assurances to force appearance at trial. They thought that was unjust and discriminatory with no reasonable alternatives.

In 1969, President Richard Nixon endorsed preventative detention, and the spirit of bail reforms envisioned by Attorney General Kennedy and President Johnson died. In the ruling on *United States v. Salerno*, 481 U.S. 739 (1987), Supreme Court Justice William Renquist wrote, "The government's regulatory

interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest." There is a process in the reasoning in understanding bail reform and the political framework and lineage in which the concept is debated.

SENATOR HARRIS:
I see bail reform as a question of how long the government can deprive you of your liberty prior to any argument as to why it is doing so. What due process protections should Legislators enact to ensure you are not just locked up on suspicion before you have been tried? Pretrial detention is one of the government's strongest powers to deprive you of liberty.

The Nevada Supreme Court ruled in *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155 (2020) provisions of the State's bail law were unconstitutional. Prior to the ruling, courts were not required to consider less restrictive conditions of release before determining imposition of bail was necessary. The State was released from its burden of proving imposition of bail was necessary to protect community safety or ensure a person's appearance in court.

Section 8 of A.B. 424 removes the part of NRS 178.4851 found unconstitutional. It consolidates existing release procedures with or without bail into a standard procedure for courts to make pretrial determinations. It requires courts to hold pretrial release hearings in open court. Hearings may be done via remote communication to allow smaller jurisdictions flexibility. A person's custody status must be determined within 48 hours after they have been jailed. In my Proposed Amendment 3374 (Exhibit H) to section 8 of A.B. 424, the ability is added to provide a continuance if the district attorney or prosecutor's office needs more time to gather evidence.

Section 8 of A.B. 424 would also establish a uniform standard that pretrial release determinations be made by a court, regardless of the underlying offense. The court may only impose bail and/or a condition of release if it is necessary to protect the community or ensure court appearances. Courts would be required to consider federal policy guidelines and people's financial documents when making pretrial custody determinations. Let us be honest: if a judge imposes bail beyond what you can afford, that is clearly detention. The bill includes a mechanism for courts to determine what people can afford, then weigh that

information against other factors. Section 8 would also require courts to make certain findings relating to imposing bail or release conditions.

Sections 2, 9, 10 and 11 of A.B. 424 have conforming changes described in section 8.

Section 12.5 of the proposed amendment, Exhibit H, authorizes justices of the peace to conduct pretrial release hearings in a different township. This would benefit smaller jurisdictions with a single justice of the peace; courts would not have to be open 24/7.

Section 4.1 of the proposed amendment, Exhibit H, would authorize courts of competent jurisdiction to adopt administrative orders relating to when people may be released pending trial. Our ultimate goal is to have people released as soon as possible; nothing in A.B. 424 would restrict courts' ability to release people—even if with conditions. If the person declines the conditions, he or she is still entitled to a hearing based on *Valdez-Jimenez v. Eighth Jud. Dist. Ct*. People would be able to sign a document relating to their pretrial release ensuring they return for hearings.

We originally wanted to replace the bail hearing schedule in the bill with 24-hour release. However, we compromised by making it 48 hours minimum and retaining the hearing schedule.

SENATOR HANSEN:
The purpose of bail is to reduce flight risk, circumvent failure to appear and ensure public safety. When reviewing the need to allow bail, would judges be allowed to review people's history of absconding?

SENATOR HARRIS:
Yes. Past behavior is often a great indicator of flight risk.

SENATOR HANSEN:
In our large rural districts, judges are not always available. The bill considers that, plus the constitutional importance of innocent until proven guilty.

SENATOR PICKARD:
Are rural justices of the peace relieved of the 48-hour pretrial release hearing limit requirement?

SENATOR HARRIS:
No. Section 12.5 of Proposed Amendment 3374, Exhibit H, authorizes justices of the peace to conduct pretrial release hearings in other townships. The bill would expand their jurisdictions to allow them to cover each other's hearings.

SENATOR PICKARD:
What if the 48-hour limit is 2:00 a.m.? Will justices of the peace still have to wake up at that hour, turn on their cameras and do pretrial hearings?

SENATOR HARRIS:
Forty-eight hours is the maximum limit; I hope courts do not wait until the forty-eighth hour. An on-call schedule could be made for justices of the peace to cover for each other. In rural areas, significant numbers of people are not arrested at 2:00 a.m.

SENATOR PICKARD:
In domestic violence cases, there is a 12-hour hold before hearings may begin. If a person is arrested at 6:00 p.m. Friday, that pushes the hearing into the wee hours of Saturday morning. Why not follow the rule established in *Valdez-Jimenez v. Eighth Jud. Dist. Ct.* and change the hearing limit to a reasonable period? Every situation is different.

SENATOR HARRIS:
I believe hearings can be held for people on 12-hour holds to determine release. Dispensing justice can be inconvenient; granting people's rights is not always easy. I did not use the "reasonable time" language because I had many conversations with people about their definition of what is reasonable. Some public defenders will say 12 hours; judges may tell you it is a week, and I have seen people held up to 11 days. We adopted the middle ground of 48 hours.

SENATOR PICKARD:
You are suggesting justices of the peace may have to work six days a week. Is there a mechanism to establish a Statewide substitution calendar, or are you leaving that up to courts to do voluntarily?

SENATOR HARRIS:
Justices of the peace are able to create a Statewide substitution calendar without legislative authorization. The Chief Justice can help with scheduling on

a broader level. The bill would not create significantly more work for anyone, and many people would be released sooner.

SENATOR PICKARD:
I agree. People are jailed after probable cause and at least some indication they were involved in a crime.

SENATOR SETTELMEYER:
Have you shown the proposed amendment, Exhibit H, to some of the rural judges or justices of the peace? I appreciate the change to 48 hours because that was a major concern I had heard about A.B. 424 from rural court representatives. While we want people to be released as soon as possible, stupid people do stupid things on three-day weekends. Sometimes judges are required to hold hearings after 48 hours. I represent the Lake Tahoe area, and often on holidays it gets a little—shall we say—busy in the court system. People are jailed for probable cause.

SENATOR HARRIS:
The Nevada Judges of Limited Jurisdiction have reviewed the proposed amendment, Exhibit H.

SENATOR PICKARD:
Would not the bill require bailiffs, attorneys, recording staff and information technology staff to work extra hours? That will cost a lot. Is there a funding provision, or are we simply asking counties and court systems absorb the price?

SENATOR HARRIS:
If pretrial release hearings are done via videoconferencing, a bailiff or court reporter is not needed.

SENATOR PICKARD:
If a hearing is held, staff must be present at the courthouse even if a judge is not present.

SENATOR HARRIS:
If I need to clarify in the bill that full staff need not be present for every hearing, I will do so. Many provisions in A.B. 424 work in conjunction with each other. Judges can release people without conditions via email. Proceedings can be transcribed after the hearing via a court reporting service. I am hopeful things

will operate differently. We are arresting fewer people and holding them for shorter times. Counties and courts will see savings from not holding people in jail for so long. After the *Valdez-Jimenez v. Eighth Jud. Dist. Ct*. ruling, some jurisdictions built its provisions into their budget requests.

SENATOR PICKARD:
I have had rural courts tell me they lack staff or the technological capability to have remote meetings. Many witnesses lack the means or knowledge to testify via videoconferencing and so must go to court.

SENATOR HARRIS:
I am willing to discuss ramp-up time for courts to enact A.B. 424. There will be growing pains for them.

SENATOR PICKARD:
What is the bill's effective date?

SENATOR HARRIS:
Absent an effective date, the default is October 1.

SENATOR PICKARD:
Is that enough time?

SENATOR HARRIS:
If people do some problem-solving, it is enough time. However, again, I will consider more ramp-up time.

SENATOR PICKARD:
Once Legislators set the budget, it is a done deal. It may take longer than October 1 for courts to get the pieces in place. An immediate appropriation may be needed.

SENATOR HARRIS:
Municipalities and the State are expecting American Rescue Plan funding.

SENATOR SETTELMEYER:
Some State areas have events that may create legal problems. Trying to process them through the court system has become an issue. Perhaps an amendment to

A.B. 424 would allow governments to charge expedited court costs to event organizers.

SENATOR HARRIS:
I would allow for a short continuance if good cause is demonstrated. A large influx of visitors who may not follow the law is an example of why courts may need more time to process offenders. Perhaps we could require a bond to pay for that from event organizers.

SENATOR OHRENSCHALL:
I was a member of a Uniform Law Commission drafting committee that worked on the Uniform Pretrial Release and Detention Act. Assembly Bill 424 would go a long way to improve conditions in Nevada.

CHAIR SCHEIBLE:
I refer to bail as an octopus with eight arms and myriad tentacles we keep trying to wrangle. I have questions about the philosophical intent of A.B. 424. We envision pretrial detention hearings as similar to now: one attorney each for the defense and prosecution who make representations to the court based on information they have obtained. The attorneys would not have to call witnesses.

The defense attorney could say, "Your Honor, I have not had a chance to review this with my client. It's my understanding he works at Jimmy John's three days a week." The prosecutor could say, "Your Honor, I haven't received a copy of the general conviction, but it's my understanding he has a previous conviction." This is opposed to the level at trial whereby each side must present authenticated evidence of those representations. Is this correct?

SENATOR HARRIS:
Yes.

CHAIR SCHEIBLE:
At the hearing, we do not expect there will be 48 hours of discovery in anticipation of the hearing. The prosecutor probably has not filed the arrest report and maybe a charging document; a Nevada pretrial risk assessment sheet or a photo is given to the defense attorney. The prosecutor would not be expected to provide full discovery, and the defense counsel would not be expected to provide everything he or she is planning to introduce or discuss. Is that correct?

SENATOR HARRIS:
The intention of A.B. 424 is each party will review what is available in an equitable exchange of information at the pretrial hearing. There is no requirement that they have to figure out every detail prior to hearing.

CHAIR SCHEIBLE:
Practically the only time someone would not have a hearing is when he or she is released prior to when the court could schedule it. Is that right?

SENATOR HARRIS:
One other time would be if the person waives the hearing.

CHAIR SCHEIBLE:
What is the purpose of the waiver?

SENATOR HARRIS:
Every individual has the right to waive a pretrial hearing.

CHAIR SCHEIBLE:
If someone is unable to attend a pretrial hearing, would that fall under the continuance for good cause exception?

SENATOR HARRIS:
There could be a continuance for good cause shown or, in conjunction with an attorney, someone could waive appearance at the hearing.

MR. PIRO:
Senator Pickard, the problem with the reasonable time frame is in places like Laughlin, Mesquite and Goodsprings, people wait 7 to 12 days for their pretrial hearing; in Henderson, people wait 3 to 5 days. In Sparks, a judge decided "prompt" meant 12 days; that case is now pending at the Nevada Supreme Court. Definitions of "reasonable" and "prompt" are all over the map. In statute, they mean immediately and without delay. When public defenders interpret statute, we go with plain meaning: immediately and without delay. Forty-eight hours is a concession we are willing to make to allow for continuances if the State or public defenders need them.

As for Senator Pickard's example of the 2:00 a.m. hearing, while we call it a 24/7 court, that is untrue in the Las Vegas Justice Court. We hold hearings

within 12 to 24 hours, and leftover people are moved to the next day. Courts are infrastructure, and it is time we adequately resource them so justice can be dispensed in equal measure. The Nevada Constitution is not being applied in Sparks and Henderson the same way it is applied everywhere else in the State—that is concerning. It diminishes the concept of innocent until proven guilty, which we hold makes our Country No. 1 in the world.

The bill's 48-hour timeline would be similar to when judges work warrant phones at inconvenient times. United States Chief Supreme Court Justice Antonin Scalia said about the ruling in the *County of Riverside v. McLaughlin* (89-1817), 500 U.S. 44 (1991), a 48-hour limitation was overly generous given existing technology. We have advanced beyond 1991 and worked hard to ensure bail still applies with the 48-hour limit. In the Las Vegas Township Justice Court, about 21 people bail out every day and about 1,800 people bail out every 3 months before 12 to 24 hours. We could eliminate bail if we adopted the 24-hour limit; if not, we must retain some amount of bail.

Assembly Bill 424 allows for OR administrative orders, which allow the Las Vegas Township Justice Court to release people based on a set determination with a set date to return. Maybe a place like Boulder City only has one judge, but another could cover for him or her so no one works every weekend day.

SENATOR OHRENSCHALL:
I represent unincorporated areas of Clark County. Can you repeat the pretrial hearing time difference between Las Vegas and unincorporated Clark County?

MR. PIRO:
As the third-largest city in Nevada, Henderson is hardly a rural jurisdiction—yet people wait three to five days in its justice and municipal courts. If you are arrested in Clark County's unincorporated area, you will get a different level of justice than in the City of Las Vegas jurisdiction. That is a problem; prompt should be prompt all over the State.

MS. BERTSCHY:
Doing the right thing is not always easy, but it is always right. The way we handle bail needs to change. The most contentious part of A.B. 424 is the timing of pretrial hearings. I promise, the sky will not fall down if the bill passes.

If we keep the status quo, our communities will be damaged. Due to Covid-19, courts had to reimagine how to conduct hearings.

In the Eightieth Session, I asked this Committee to ensure we had bail hearings within 24 hours. During the 2019-2020 Interim, I asked Senator Harris's Interim Study Committee to concede 12 hours was not enough and to use 12 to 24 hours. Assembly Bill 424 asks us for another concession to make it 48 hours. That is the maximum time because caselaw and science show community safety is at risk if pretrial bail hearings are held later.

The right to liberty is arguably one of our most important constitutional rights. Courts are required to review probable cause determinations within 24 hours. District attorneys, attorneys and public defenders should be present when bail is set. The bill will allow *Valdez-Jimenez v. Eighth Jud. Dist. Ct*. protections to fully take effect.

The *County of Riverside v. McLaughlin* defined "prompt" as no later than 48 hours after arrest. Justice Scalia stated 48 hours was extremely generous and asked it to be reduced. Studies by the Arnold Foundation show the longer people are in custody, the more it impacts public safety. When people at low-to-moderate risk are held for 2 to 3 days, they are more than 40 percent likely to commit new crimes before trial than are equivalent defendants.

The Reno Township Justice Court allows bail hearings to occur on the next business day; in Sparks, it is within three days. At the Reno Municipal Court, a college student was arrested on a Saturday for a nonviolent offense, with a hearing set for Monday. The judge decided to hold it Tuesday, and the student without a criminal history was kept in custody on a no-bail hold until then. My Office of the Public Defender, Washoe County, has discussed instituting a system to cover weekend hearings with staff available in shifts or given extra pay if they volunteer to work weekends or holidays. Washoe County courthouses are closed on weekends for witness testimony. They can appear at hearings via audiovisual transmission, Zoom or phone. When you are arrested, it should not matter what side of the street you are on to achieve the highest level of justice or due process.

ANNETTE MAGNUS (Executive Director, Battle Born Progress):
Battle Born Progress supports A.B. 424. In our society, you are innocent until proven guilty. Unfortunately, our bail system does not reflect this, and people

are deprived of liberty before guilt is proven. We agree people should appear before a judge within 48 hours maximum. They should not be deprived of liberty before there is even a trial. The bill will help ensure no matter where you live in the State, you have equal access to justice. We must continue to work on this critical issue.

MR. HOFFMAN:
Nevada Attorneys for Criminal Justice supports A.B. 424 despite our concerns over continuances and the 48-hour detention limitation. As per comments by Senators Pickard and Settelmeyer as to probable cause hearings, such hearings serve a different function than those for bail hearings. A probable cause hearing is about determining if there is enough evidence to charge a person; if not, continued detention is a violation of the Fifth Amendment. A release hearing is about whether the person is a flight risk or danger to the community. If not, holding the person is in violation of the Nevada constitutional right to bail.

Assembly Bill 424 would provide a uniform standard throughout the State. Everyone has equal constitutional rights whether in a big city or small town. A single mom arrested in Lincoln County needs to get out of jail to take care of her kids in the same way as does a mom in Washoe County.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):
Progressive Leadership Alliance of Nevada seeks to structurally transform Nevada's criminal justice system by organizing with people with direct experience with mass incarceration. In the Eightieth Session, and during the 2019-2020 Interim, we worked closely with stakeholders to address problems with our pretrial detention system. You should not have to pay for your freedom from jail. Millions of people are behind bars, despite a presumption of innocence, because they cannot afford bail.

Forty-eight hours is the absolute maximum time it should take to see a judge. A man reached out to our office seeking assistance for his pregnant domestic partner. He anxiously phoned us a dozen times in 24 hours. Every minute someone is jailed is time away from loved ones, jobs and education. No matter which county you live in, you should have equal access to judgment in the same time period.

JOSEPH LANKOWSKI:
I am an ex-offender out on bail. While A.B. 424 does not go far enough, it is a harm-reduction measure that is an important step in the right direction toward justice and equity. Testifiers today have implied upholding people's civil liberties is too expensive. Where will find the money to give citizens their constitutional rights is not a viable excuse. Take money from the police, use federal funding or use marijuana tax money to make bail reform happen. The limit on holding pretrial detention hearings should be 24 hours. Being innocent until proven guilty does not exist in this State. The moment you have contact with police, they only see your arrest records, not your conviction records.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
Although the American Civil Liberties Union of Nevada would prefer hearings occur within 24 hours, we support 48 hours maximum. People are entitled to the same constitutional rights if they live in a rural or urban community. A continuance cannot be used to create an unequal standard of justice. We have exhausted what the State can achieve about bail reform through legislation; if necessary, the American Civil Liberties Union of Nevada will litigate matters to provide more legal clarity.

JAGADA CHAMBERS:
Every moment of incarceration in that dungeon is filled with trauma. We have to consider the people we are talking about today may be innocent. Someone should be on deck at all times to get people out of jail within hours through the appropriate channels. The reality is irreparable damage occurs behind bars. During the Black Lives Matter protests in Clark County last summer, police snatched innocent people and put them in cages, even though they had not broken any laws. Committee, think about the issue from the viewpoint of that person held unjustly. As for any fiscal demands or restraints caused by A.B. 424, please do not let the Legislature be a money-grabber for certain counties. District attorneys nationwide can enact bail reform by themselves. The next district attorney elected in Clark County will have to make it a reality.

COURTNEY JONES:
It is apparent Legislators and the public, especially in Clark County, have different ways of thinking about bail reform. If we prioritize money over people's lives, that indicates who should and should not be in office. The Constitution should dictate your actions. We are talking about real human lives and change.

Every single moment in custody impacts people's lives. The cost the Legislature thinks is too much is not enough for the people.

MARCUS LOPEZ (Americans for Prosperity Nevada):
The Americans for Prosperity Nevada supports A.B. 424. We have been involved in its issues across the Country for several years. The ruling in *Valdez-Jimenez v. Eighth Jud. Dist. Ct*. was correct. People should not be detained simply because they cannot afford cash bail. The main issue here is innocent until proven guilty, so there should be as little wait time as possible for pretrial hearings.

LESLIE TURNER:
People are innocent until proven guilty, and the burden of proof is with the State. Timeliness in holding hearings needs to be a priority, regardless of how much it costs. We are talking about people's lives. A technically innocent person could lose his or her housing, job or kids. That cannot be compared to inconveniencing a judge at 3:00 a.m. or on a weekend. Forty-eight hours is the maximum for pretrial detention; it should be 24 hours. The community is asked to constantly concede on this issue. What are the State and law enforcement willing to concede? In terms of district attorneys giving continuances, what is the purpose of that? How long can you stretch out detention without evidence?

KEITH LEE (Nevada Judges of Limited Jurisdiction):
You have a packet of concerns (Exhibit I) expressed by Nevada Judges of Limited Jurisdiction about A.B. 424. It includes the chart "Pretrial Bail Procedures," which includes probable cause determination, bail set by judges and hearings based on the ruling in *Valdez-Jimenez v. Eighth Jud. Dist. Ct*., whether there is an administrative order, bail schedule or pretrial service. The numbers on the chart, Exhibit I, 48, 72, 9, etc., refer to the amount of hours involved for hearings.

I assume the hours Mr. Piro and Ms. Bertschy said it takes before pretrial hearings are correct. Those are one-off time periods. I want to dispel the implication the reason it takes so much time is judges' failure to act. What were the circumstances that necessitated that much time? It is seldom the fault of judges. Sometimes, defense counsel is unable to meet with the client or the district attorney is unable to get a charging document. Many circumstances can factor into a delay. The chart in Exhibit I, "Time To Bail Hearing In Neighboring

States," shows Arizona has a statewide initial court appearance schedule of 24/7/365.

SENATOR SETTELMEYER:
In section 8, subsection 2, paragraph (a) of A.B. 424, a person must be given an attorney free of charge for the pretrial release hearing. Generally, that is not true if you can afford one. The bill provides counsel regardless. Is there a fiscal note for that expense, which could be a burden on small counties?

MR. LEE:
There have been solicited and unsolicited fiscal notes filed for A.B. 424. I do not know the fiscal impact on district attorneys' offices.

SENATOR PICKARD:
Do you agree section 8, subsection 2, paragraph (a) of A.B. 424 requires a no-cost attorney in every case?

MR. LEE:
Yes, the proposed amendment, Exhibit H, states, "The person must be appointed an attorney, free of charge."

SENATOR PICKARD:
Would that cost mean a significant policy shift in how the accused are defended?

MR. LEE:
I do not know the rules for appointing attorneys or at what point the appointment must be made.

SENATOR PICKARD:
Clark County has the wherewithal to have judges on call and covering for each other. In counties with only 1 or 2 justices of the peace, is the 48-hour release feasible without working more than the 40 to 50 hours they already work?

STEPHEN BISHOP (Ely No. 1 Township Justice Court, White Pine County; President, Nevada Judges of Limited Jurisdiction):
The belief rural county courts are holding people too long is mistaken. In White Pine County last week, we held five people: cases of multiple sex assault, escalating domestic violence, eluding with property damage. We do not

disagree with protecting people's liberty. People should be released and at least seen by the judge to have their bail set at an individualized hearing as soon as possible.

Our problem is not philosophical but practical. Assembly Bill 424 will require resources not provided to us nor a mechanism to do so. It is all well and good to hear Washoe and Clark Counties testify in favor of the bill, but there are more attorneys in their Public Defenders' Offices than in my entire District. There are more attorneys in this room than public defenders in the Seventh Judicial District Court Public Defenders' Offices.

The few public defenders we have must meet with clients, review case files, prepare for hearings, conduct hearings and perform a conflict test in less than 48 hours. We are setting them up for failure. For me as a judge, it is a little difficult but doable. Staff and judges will be on call and go to the hearing, but the public defenders might not be ready. Nothing will be accomplished.

We do not have the staff to carry out the provisions of A.B. 424. Regardless if the hearing is held remotely, someone has to process and distribute the orders and someone must start the recording in the courtroom, so we have a record of the hearing. Staff will have to be there for weekend hearings. We can divide that up across the counties in the District, but each county will have to have its own staff present for its cases.

How do victims entitled to be present under Marsy's Law attend remote hearings? Half the time, they are indigent or close to it, lack microphones or webcams or do not even have computers. The courtroom must be open, regardless if the meeting is remote. The bailiff and staff must be present.

Justice Scalia's comment that 48-hour pretrial detention is overly generous is a misreading of *County of Riverside v. McLaughlin*. That case was not about an evidentiary adversarial bail hearing with counsel and cross-examination of witnesses. The case was about a 48-hour probable cause determination, which we already do. The case did not involve bail, counsel, an adversarial hearing over ex parte or a judge presiding over the hearing.

Realistically, the federal system does not require a straight 48 hours, rather 48 hours excluding weekends and holidays. California, Utah, Oregon and Washington State all exclude weekends from the 48 hours. Give us that ability,

so we are not stressing our public defenders, court staff or judges. Yes, we can swap out judges, but our ability to do so is limited.

I was an early adopter of the pretrial risk assessment tool; White Pine County began using it right away. We got a lot of flak for releasing people too quickly. We have been held up as a model in the State for our implementation of *Valdez-Jimenez v. Eighth Jud. Dist. Ct*. We conducted hearings according to the ruling by the afternoon it was issued.

RANDALL SODERQUIST (Elko Township Justice Court, Department A, Elko County; Municipal Court Judge, Department A, City of Elko):
Bail reform has accelerated over the last ten years. I am impressed and gratified to see the progress Elko County has made over that period. Assembly Bill 424 gives me a bad feeling because, in my County, the strict 48-hour time frame will make it worse for everyone involved, including defendants.

The Elko County Public Defender does not support A.B. 424, saying, "This will be a disaster." That office has been decimated over the last year for several reasons. Staff must allocate its time between preparing for bail hearings and trial arguments. We are sacrificing time that should be spent in adequately preparing for trial for representing defendants. Instead, we are continuing trials just to get preliminary, individualized bail hearings.

SENATOR OHRENSCHALL:
If someone is arrested under one of your courts, and he or she cannot afford an attorney, would he or she not be provided with a public defender or court-appointed attorney? I do not see a policy shift under A.B. 424.

JUDGE SODERQUIST:
No one disagrees with the basic concepts in A.B. 424; it would not create a policy shift. What happens is the public defender is present at pretrial hearings to help people possibly bail out. The hearing would need a continuance because the person does not have an attorney. I then have to reach out to the County to find someone to take the case. If someone qualifies for free counsel, regardless of income, I will appoint an attorney.

SENATOR OHRENSCHALL:
In regard to the 48-hour issue and Marsy's Law, would it help prosecutors to have victims present at pretrial hearings?

JUDGE SODERQUIST:
Yes, they should be included. We do not oppose having a time frame; however, a straight 48 hours causes myriad problems.

JUDGE BISHOP:
Under our bail schedule, if people can afford counsel, they post bail and get out of jail. The ones who stay will be appointed a public defender. Whether or not someone is indigent, a public defender is presumptively appointed Monday through Friday.

In regard to Marsy's Law, after bail is posted, the public defender is due back in court by 9:00 a.m. the next day. That gives the public defender time to meet with the client, district attorneys time to their job, and my staff time to prepare orders and probable cause determinations. The Supreme Court recognized there are individual time circumstances for each county, and the Constitution allows for that.

SENATOR HANSEN:
I represent seven counties. Everyone here is clear on the civil rights aspects of A.B. 424: we do not want arrestees assumed to be guilty automatically and left in cells if they are indigent. Judge Bishop said White Pine County is complying with *Valdez-Jimenez v. Eighth Jud. Dist. Ct*. to the best of its ability.

JUDGE BISHOP:
Bail reform has been a long time coming; the devil is in the details. When I was a prosecutor, I am ashamed that I held bail out as a negotiating tool in plea bargains. Now, we are trying to correct those oversights through *Valdez-Jimenez v. Eighth Jud. Dist. Ct*., which has only been in place a short time. After more than 150 years of legal precedence, steering the pretrial release battleship will not be quick. Out in White Pine County, if something does not work, we try a different way.

The 48-hour limit will set up my judges, courts, attorneys and even our defendants for failure. There have been multiple instances when a person says, "I gotta get out, I gotta get out," then two days later, he or she is back in jail on another charge. They cannot even talk to their attorneys in that short time. I am expecting pushback against A.B. 424 from defense attorneys, too. You cannot expect to meet with people if they are still coming down from the

effects of drug. That is a reason why we do not do 24-hour Miranda hearings; I wait until the day after I get the papers.

How will I get my staff in for weekend hearings? It is especially difficult in rural counties with 10,000 square miles and 5,000 people to find 3 competent staff members who can handle multiple thousands of dollars of cash bail at pretrial hearings.

JUDGE SODERQUIST:
I wish my court had adequate financial resources, but our biggest resource deficit is attorneys. Regardless of how many dollars are thrown at the problem, the Public Defender's Office, Elko County, cannot recruit enough staff—and now we are asking them to work seven days a week and to spread our existing defense bar more thinly for limited benefits?

SENATOR PICKARD:
Judge Bishop said courts will have to open for pretrial hearings, so the proceedings are recorded. How many people are needed to staff a single hearing, and how long does a hearing typically last? Will courts be able to absorb the added costs?

JUDGE SODERQUIST:
When I was a court administrator, we had the triple restraints of time, quality and costs. My biggest issue is not cost but quality of representation. It is vitally important defendants have consistency throughout the court process; the same staff member must represent a person. This might necessitate hiring outside counsel, which is expensive. The Elko County Justice Court does not have pretrial release, programs or services. The money we hoped could pay for that must go to hiring outside counsel and staff.

Court proceedings must first be recorded on-site by staff, then transcribed. Everyone who wishes to appear at the hearing may do so in person. My biggest concern is securing prosecution and defense attorneys, plus how to pay for adequate representation.

JUDGE BISHOP:
Yesterday, my public defender told me he wakes up at 5:15 a.m., checks his email at 6:30 a.m. after walking his dogs, calls the district attorney at 7:00 a.m., talks to his clients until 9:00 a.m., depending on jailer availability to

take the phone to the clients, conducts bail hearings from 9:00 a.m. to 10:30 a.m., then hand types release orders for about two hours. This takes three to four hours of attorney time every day for every arrest.

SENATOR PICKARD:
If A.B. 424 passes as is, and you cannot fulfill its requirements, does that provide grounds for an appeal? Does that mean the prosecutor has to start over?

JUDGE BISHOP:
It would be something similar to a preliminary hearing, which must be conducted within 15 days. If it goes beyond that, defendants can file a pretrial writ of habeas corpus. Let us say a preliminary hearing is held within 15 days, but the case cannot be heard for 20 days. The legal defense would be habeas corpus. If the attorney cannot make the hearing within 48 hours, a dismissal would not ensue. The Supreme Court ordered my judges to hold pretrial hearings, so we must obey. The bill seeks to codify the issue.

JUDGE SODERQUIST:
We will do everything necessary to satisfy the requirements of A.B. 424. However, its practical impacts will work to the detriment of everyone involved in my County. When pretrial hearings are improperly prepared, the State usually has enough information through evidence that pretrial detention is warranted. The defense is unable to overcome the State's burden of proof. If the defense lacks the time to prepare, the hearing is held, but the person is not released.

NICOLAS ANTHONY (Counsel):
Assembly Bill 424 does not provide a penalty for failing to hold a pretrial hearing within 48 hours. The defendant has the constitutional right to a hearing pursuant to *Valdez-Jimenez v. Eighth Jud. Dist. Ct*. The right to a prompt and individualized hearing is vital.

RICHARD GLASSON (Tahoe Township Justice Court, Douglas County):
You have my opposition statement (Exhibit J). I belong to a rural limited jurisdiction court. Of Nevada's 40 courts, 38 are of limited jurisdiction without the resources of the Cities of Reno and Las Vegas. Many rural courts have just one judge. I take exception to statements today that accused judges in Minden of trampling on the liberties of citizens or inciting courts in Clark County sine qua non in our State's justice system.

My court is set up to function on weekends with staff working remotely and operating recording equipment. We have operated 100 percent remotely since March 2020, including remote appearances by defense attorneys, witnesses and defendants from jail. We must continue releasing people without waiting 12 or 24 hours for probable cause purposes. My court does that at least twice every holiday with pretrial risk assessments.

MR. JONES:
The Office of the District Attorney, Clark County, opposes A.B. 424. The Las Vegas Township Justice Court enacted bail reform after years of discussion among its criminal justice partners and considerable expense. The cost to counties cannot be discounted when bail reform is considered.

Marsy's Law must be part of every bail reform discussion. We cannot move so fast as to deny victims their right to be heard. Enforcing the law is not just the obligation of the prosecutor; it is the obligation of all within the criminal justice system.

There is a process by which a defendant can waive a *Valdez-Jimenez v. Eighth Jud. Dist. Ct*. hearing. Assembly Bill 424 could completely cut out a prosecutor from the detention hearing. No provision allows for input from prosecutors. A defendant could escape a request from a prosecutor for bail or other release conditions. No notice of waived hearings must be provided to the State, which cannot object.

In section 8, subsection 2, paragraph (b), the defense is entitled to anything accessible to the prosecutor for detention hearings. While we agree it is important for both sides to have access to the same information, "accessible" is an undefined and potentially expansive term. The discovery obligation could potentially be greater than that in a preliminary hearing. Caselaw from the federal system makes it clear a detention hearing may not serve as a main trial or discovery tool for the defense.

In section 8, subsection 4, the Office of the District Attorney, Clark County, would like clarification that detention hearings are informal proceedings. Federal caselaw makes clear the State is not obligated to present witnesses. In section 8, subsection 4, language implies if a person violates the release condition, the State has no available remedy, as provided in section 8, subsection 5.

JENNIFER NOBLE (Nevada District Attorneys Association):
The Nevada District Attorneys Association opposes A.B. 424 for the reasons raised by Mr. Jones. Most of the 17 rural jurisdictions in the State have 1 attorney. When they say the 48-hour limit is unworkable, that is not the reasonable period contemplated in *Valdez-Jimenez v. Eighth Jud. Dist. Ct*., nor the 72 hours recently approved in the *Statewide Rules of Criminal Procedure*. The time frame creates an unfunded mandate. District attorney's offices do not have the personnel for detention hearings seven days a week. Preparation for the hearings often require authorized investigative staff to access the FBI database for criminal histories and administrative staff to obtain critical information regarding law enforcement, prepare packets to review and provide risk assessments from pretrial services so district attorneys make their best recommendations to the court. If you are wealthy, you can get out of custody with minimal conditions attached. A poor person is stuck in jail, even if he or she committed the same crime.

KELLY CROMPTON (City of Las Vegas):
The City of Las Vegas opposes A.B. 424 based solely on the 48-hour provision and the resulting costs it may incur.

JAMIE RODRIGUEZ (Washoe County):
I oppose A.B. 424 because it would require courts to be open seven days a week. It takes time to hire court staff; the bill could create a system whereby staff already working 40 hours a week over 5 days would have to work 7 days. The bill needs flexibility in the time frame to address staffing needs.

LORI MATHEUS (Canal Township Justice Court, Lyon County; Senior Municipal Judge, City of Fernley):
There have been misconceptions stated today about how rural courts determine pretrial release. I oppose the 48-hour limitation without a guarantee rural courts will be given proper funding. Lyon County has three justice courts and one municipal court. We are complying with *Valdez-Jimenez v. Eighth Jud. Dist. Ct*. Defendants do not languish in custody; some hearings are held as early as 24 hours and never later than 72 hours. Defendants are represented by public defenders regardless of their ability to afford counsel. If bail is imposed, it is adjusted to the defendant's ability to pay. Statistics from the Lyon County Sheriff's Office indicate the average time in custody averages two days and seven hours.

Rural courts lack the resources, staff and technology to ensure hearings are held promptly during the regular workweek. The estimated fiscal impact of the bill on Lyon County and the City of Fernley is a combined $950,000 for the first year alone. Amending the bill to allow remote court appearances by authorized judges to cover for each other or creating a Statewide judging schedule does not include a solution or a guarantee to cover implementation costs for hearings 7 days a week, 365 days a year. Are the required public defenders and district attorneys going to bill counties to cover cases in other jurisdictions? For many reasons, Lyon County has a significant shortage of public defenders. Rural courts utilize the State's obsolete management system, which did not allow for electronic transmission of documents for six of my eight years on the bench. Physical files need to be pulled and prepared for hearings.

I simply cannot expect my employees to work seven days a week. I cannot pay overtime or give them compensation time without impacting court efficiency on weekdays. Every year, Nevada courts are faced with unfunded mandates, which are slowly bringing rural courts to their knees. Do not approve the 48-hour limit without guaranteed funding for us. People in custody will pay the ultimate price.

ELIZABETH ANDERLIK (Assistant City Attorney, City of Henderson):
The City of Henderson opposes A.B. 424 as written and is unclear which amendments will eventually be included. We are concerned about provisions for implementation, funding and victims' rights. The 48-hour pretrial hearing deadline is an improvement over the original 24 hours but does not assuage our concerns. The deadline will cause a significant change to client procedures and require overwhelming costs to courts, prosecuting offices and public defenders Statewide.

In Henderson, when people are arrested, they are put on the next court day's arraignment hearing. If they are arrested on a weekend, or miss their afternoon hearing, there is a 48-hour review by a judge, in addition to standard bail set. They will be seen on the next available court date, if necessary.

The bill's strict time requirement is unclear and unworkable. The clock starts when people are taken into custody, without defining what that means. Is that when they are taken into custodial interrogations, the time of arrest or when they are booked?

MARY WALKER (Carson City, Douglas and Storey Counties):
Carson City, Douglas and Storey Counties oppose A.B. 424 and the proposed amendment, Exhibit H. We disagree courts should provide hearings 24/7/365. Rural court systems lack the infrastructure and staff to implement the 48-hour limit. The annual fiscal note would be: Carson City, $420,000; Douglas County, $895,000; Lyon County, $700,000; and Storey County, $120,000, for a total of $2,135,000. The 48 hours should be changed to 2 judicial days or 48 business hours.

LISA CHAMLEE (Pahrump Township Justice Court, Department A, Nye County):
Historically, it has been difficult to retain public defenders to represent the indigent in rural counties. The bill's 48-hour hearing requirement sets defense counsel up to fail. They will not have time to confer with clients to go over evidence and get their side of the story to properly prepare for the hearing. Rural counsel sometimes lacks immediate and direct access to clients in detention. Section 8, subsection 2 of A.B. 424 requires all defendants be appointed counsel free of charge, which would be overly burdensome.

MARC EBEL (Aladdin Bail Bonds; Sureties Seaview):
The proposed amendment, Exhibit H, to A.B. 424 and its 48-hour hearing limit assuages many of our concerns. We are still concerned about the prioritization of bail as defined as the most restrictive option. The proposed amendment, Exhibit H, brings Nevada more in line with caselaw and *Valdez-Jimenez v. Eighth Jud. Dist. Ct*.

CHAIR SCHEIBLE:
We will close the hearing on A.B. 424 and open the hearing on A.B. 440.

ASSEMBLY BILL 440 (1st Reprint): Revises provisions relating to the issuance of certain citations. (BDR 14-376)

ASSEMBLYMAN EDGAR FLORES (Assembly District No. 28):
I was a member of the 2019-2020 Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases. Assembly Bill 440 deals with citation in lieu of arrests; between 2012 and 2018, 23 laws were enacted in the same realm. A representative of the National Conference of State Legislatures gave the Committee a presentation about the benefits of citation in lieu of arrest, specifically, what are the alternatives to arrest and the benefits of citations.

Law enforcement agencies throughout the State indicate citation versus arrest is a common practice. Nationwide, most law enforcement agencies have some type of policy of citation in lieu of arrest. The bill mainly addresses traffic and trespassing citations, involving many chapters of NRS. Assembly Bill 440, sections 3 and 3.5 define "crime of violence" in NRS 200.408. Rather than never arresting someone for a nonviolent misdemeanor, we want to codify a citation could be issued instead. What if someone repeats the same offense? Are we binding the hands of officers to not arrest the person? That is the reason for the repeat offense provisions. If a violent crime occurs, officers have the discretion to make an arrest. Section 6, subsection 2, paragraph (b), subparagraphs (2) and (3) add language for continued violations and personal or property damage danger.

There has been a shift in the citation versus arrest conversation nationwide. A host of issues is attached to arrests: missed work, not picking up children, towed vehicles. For a first-time misdemeanor with no history of not showing up in court, the penalty should be a citation with a fine.

MR. PIRO:
Assembly Bill 440, section 6, subsection 2 contains a fail-safe. A concern was it might be difficult to get a person off property after a security guard has issued a warning and police are called. The warning indicates the person may be a repeat offender and therefore subject to arrest. The bill would codify law enforcement practices begun during Covid-19 when officers issued citations to reduce the jail population.

MS. SAUNDERS:
The Progressive Leadership Alliance of Nevada supports A.B. 440.

MR. HOFFMAN:
The Nevada Attorneys for Criminal Justice supports A.B. 440.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
The Las Vegas Metropolitan Police Department (LVMPD) strongly opposes A.B. 440 because it strips away officer discretion. Law enforcement is not black and white, and officers often need the discretion to deal with situations in an appropriate manner. In the vast majority of cases, citation is the appropriate manner—but not always. While the bill provides guidelines for when officers

must make arrests, officers will not be allowed to make decisions based on the circumstances.

The LVMPD has a policy of not making misdemeanor arrests except for domestic violence and DUI, which is mandated by State law. It should not be codified. Only 11 percent of inmates in the Clark County Detention Center are misdemeanor offenders, mostly for DUI and domestic violence. However, in cases like peeping Toms and minor animal abuse, the crimes are likely to be repeated. The bill would prohibit the officer from making an arrest, thus jeopardizing public safety.

ERIC SPRATLEY (Executive Director, Nevada Sheriffs' and Chiefs' Association):
The Nevada Sheriffs' and Chiefs' Association opposes A.B. 440 for the same reasons as Mr. Callaway.

MS. NOBLE:
The Nevada District Attorneys Association opposes A.B. 440 for the same reasons as Mr. Callaway.

MIKE CATHCART (City of Henderson):
The City of Henderson opposes A.B. 440 because officers need discretion to use the tools necessary to keep our communities safe. The bill would create too much uncertainty for officers in the field.

MISTI GRIMMER (Nevada Resort Association):
The Nevada Resort Association opposes A.B. 440 because officers need the utmost discretion as to how to address offenses in the field.

COREY SOLFERINO (Washoe County Sheriff's Office):
The Washoe County Sheriff's Office opposes A.B. 440.

CHAIR SCHEIBLE:
We will close the hearing on A.B. 440 and open the work session on A.B. 23, A.B. 24, A.B. 25, A.B. 58, A.B. 59, A.B. 157 and A.B. 406 in a consent calendar format.

ASSEMBLY BILL 23 (1st Reprint): Revises provisions regarding the procedure to commit an incompetent criminal defendant. (BDR 14-291)

ASSEMBLY BILL 24: Revises provisions relating to a forensic facility to which certain offenders and defendants with a mental illness may be committed. (BDR 14-292)

ASSEMBLY BILL 25 (1st Reprint): Revises provisions relating to the conditional release of certain persons found to be incompetent. (BDR 14-295)

ASSEMBLY BILL 58 (1st Reprint): Makes changes relating to the authority and duties of the Attorney General. (BDR 3-417)

ASSEMBLY BILL 59 (2nd Reprint): Revises various provisions relating to tobacco. (BDR 15-420)

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)

ASSEMBLY BILL 406 (1st Reprint): Revises provisions relating to the collection of child support. (BDR 3-138)

PATRICK GUINAN (Policy Analyst):
As indicated in the work session document (Exhibit K), A.B. 23 revises provisions regarding the procedure to commit an incompetent criminal defendant.

As indicated in the work session document (Exhibit L), A.B. 24 revises provisions relating to a forensic facility to which certain offenders and defendants with a mental illness may be committed.

As indicated in the work session document (Exhibit M), A.B. 25 revises provisions relating to the conditional release of certain persons found to be incompetent.

As indicated in the work session document (Exhibit N), A.B. 58 makes changes relating to the authority and duties of the Attorney General.

As indicated in the work session document (Exhibit O), A.B. 59 revises various provisions relating to tobacco.

As indicated in the work session document (Exhibit P), A.B. 157 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.

As indicated in the work session document (Exhibit Q), A.B. 406 revises provisions relating to the collection of child support.

SENATOR HANSEN:
I would like to pull A.B. 59 and A.B. 157 from the consent calendar.

CHAIR SCHEIBLE:
We will pull A.B. 59 and A.B. 157 from the consent calendar.

> SENATOR SETTELMEYER MOVED TO DO PASS A.B. 23, A.B. 24, A.B. 25, A.B. 58 AND A.B. 406.
>
> SENATOR CANNIZZARO SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHEIBLE:
We now open the work session on A.B. 59.

MR. GUINAN:
As indicated in the work session document, Exhibit O, A.B. 59 prohibits the selling, distributing or sale of tobacco and nicotine products to people under the age of 21.

Sellers of said products are required to use an independent, third-party age verification system for customers. The Attorney General must inspect all locations selling tobacco and nicotine products every three years. The bill also repeals criminal penalties for certain violations relating to the sale of tobacco and nicotine products. It replaces the penalties with civil penalties and revocation of business licenses.

SENATOR HANSEN:
While I realize A.B. 59 would bring Nevada in line with federal laws, I am concerned about the age 18 provision. We say 18-year-olds cannot use tobacco, yet under State law they can serve on a jury, vote, marry, purchase firearms, drop out of school and enroll in the military. If we treat these people like adults in so many other ways, then say they cannot buy cigarettes and chewing tobacco, that is wrong. Either they are or are not adults. I will vote no on A.B. 59.

SENATOR SETTELMEYER:
If we truly care about reducing tobacco use, we need to make possession of tobacco and nicotine products by underage users a crime. That has not been done Statewide, just by county. I will vote no on A.B. 59.

SENATOR OHRENSCHALL MOVED TO DO PASS A.B. 59.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HANSEN AND SETTELMEYER VOTED NO.)

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CHAIR SCHEIBLE:
We will close the work session on A.B. 59 and open the work session on A.B. 157.

MR. GUINAN:
As indicated in the work session document, Exhibit P, A.B. 157 would allow a victim of certain discriminatory conduct relating to an incident involving a peace officer to bring a civil action for damages. A civil action may be brought if another person, because of the race, color, religion, national origin, physical or mental disability, sexual orientation, or gender identity or expression of the other person, causes an officer to respond to a location with the intent to infringe upon the rights of, cause to be harassed or remove or damage the reputation or economic interests of the person.

SENATOR HANSEN:
Assembly Bill 157 is too broad by including "cause the person to feel harassed, humiliated or embarrassed." The bill is one of several this Session that is hostile to police. The bills make law enforcement out to be the bad guys when the opposite is true. When a bill allows you to claim the cops made you feel humiliated and embarrassed, then you sue them in a civil suit; that is too far. I will vote no on A.B. 157.

SENATOR CANNIZZARO:
My interpretation of A.B. 157 is a civil suit may be filed against the individual who utilizes law enforcement improperly, not officers. The bill has nothing to do with going after law enforcers. It targets others who intentionally inflict emotional distress.

MR. ANTHONY:
You are correct. The bill allows a civil suit against a person who causes a peace officer to appear, not against the officer.

SENATOR CANNIZZARO:
The bill is analogous to employing other harassment tactics like driving by someone's house, calling the person, or using social media to cause emotional distress, then the person called State or municipal law enforcement.

SENATOR HANSEN:
I misread the bill as to the involvement of law enforcement. While I do not want to discourage people from calling officers, the bill is still crazy broad. I do not want to discourage people who feel uncomfortable facing a civil suit because another person is embarrassed, humiliated or harassed if officers come to deal with certain situations.

SENATOR HARRIS MOVED TO DO PASS A.B. 157.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HANSEN, PICKARD AND SETTELMEYER VOTED NO.)

* * * * *

CHAIR SCHEIBLE:
We will close the work session on A.B. 157 and open the work session on A.B. 158.

ASSEMBLY BILL 158 (1st Reprint): Revises the penalties for certain offenses involving alcohol or cannabis. (BDR 15-360)

MR. GUINAN:
As indicated in the work session document (Exhibit R), A.B. 158 revises and establishes penalties for certain offenses involving alcohol, marijuana and cannabis. For a first offense, the bill requires offenders to perform community service and attend a meeting with victims of people injured or killed by DUI drivers. For a second offense, offenders must complete counseling or participate in an educational program, support group or other treatment program for the use of alcohol or other substances. The bill also provides for record sealing and expanding the jurisdiction of juvenile courts relating to alcohol or controlled substances. It also provides an officer may issue a citation to a child for offenses relating to alcohol or marijuana.

Two amendments are included in the work session document. A conceptual amendment, Exhibit R, was submitted by Brigid Duffy, Director, Juvenile Division, Office of the District Attorney, Clark County. Another proposed amendment, Exhibit R, was provided by Ms. Bertschy and Mr. Piro.

SENATOR HANSEN:
Who will pay for the provisions of A.B. 158? Anyone under the age of 21 who buys or consumes alcohol in public shall be punished. An enormous number of 100-hour counseling sessions will be needed. The amount of alcohol consumed by underage drinkers in Nevada is high. Why does the bill lack a fiscal note? Who will provide the 100 hours of counseling?

CHAIR SCHEIBLE:
It does not mean every minor will be arrested for violating the bill's provisions. Counseling is already mandated in such circumstances, and organizations are used to providing them.

SENATOR CANNIZZARO:
Many different organizations offer counseling when people are out of custody or on probation or parole and serving conditions for many offenses. There would

not necessarily be a cost to the State because the counseling is not generally provided by it.

SENATOR HANSEN:
Are you saying 100 hours of counseling is already provided for arrested underage drinkers, so there is nothing new in the bill? If so, what does the bill accomplish?

CHAIR SCHEIBLE:
Assembly Bill 158 provides for a warning system and requirements people must fulfill if they are convicted. In law, we have different counseling for different crimes; we also have different requirements for people who commit different offenses, such as juveniles who need supervision. When people are sentenced to 100 hours of counseling, they simply do not just go down the hallway for it. They must meet with their attorneys, social workers, parents or grandparents and formulate a plan to get the counseling. There are many organizations—not the State—that offer counseling for free or a fee.

SENATOR OHRENSCHALL:
Assembly Bill 158 will provide for diversionary programs so children do not end up in the juvenile delinquency system. For the bill's offenses, there will be treatment, therapy and community service to avoid bringing children before judges.

SENATOR HANSEN:
I understand the bill's basic provisions. However, I envision difficulties in implementing the bill in rural areas with fewer counseling options.

> SENATOR OHRENSCHALL MOVED TO AMEND AND DO PASS AS AMENDED A.B. 158.
>
> SENATOR CANNIZZARO SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHEIBLE:
We will close the work session on A.B. 158 and open the work session on A.B. 286.

ASSEMBLY BILL 286 (2nd Reprint): Prohibits certain acts relating to firearms. (BDR 15-21)

MR. GUINAN:
As indicated in the work session document (Exhibit S), A.B. 286 restricts the manufacture, possession and purchase of firearms and unfinished frames or receivers not imprinted with a serial number. Penalties are provided for violating the restrictions; there are certain exceptions to the restrictions. There is a proposed amendment, Exhibit S, from Assemblywoman Sandra Jauregui. Chair Scheible was added as a bill cosponsor.

SENATOR HANSEN:
A ghost gun has never been used in the commission of a crime in Nevada. The bill raises constitutional issues; if anything, we always want to err on the side of constitutional protections. The annual Shot Show trade show, which brings an average $275 million to the State, is threatening to leave Las Vegas. To antagonize such a profitable convention is a mistake. We heard testimony that felons are somehow going to use ghost guns. A 2016 Department of Justice report found of prisoners who possessed a gun during their offense, 90 percent did not obtain the gun from a retailer. The idea that, because of a background check, these guys are going to be denied buying a gun is ignoring reality. There is a tremendous firearms black market, especially by convicted felons.

Poor people can buy ghost guns. The typical cost of a handgun is about $500; ghost guns cost a lot less. Residents of areas where police have been defunded feel more vulnerable. The bill would deny them the opportunity to legally purchase less expensive firearms. In the last year, gun sales have spiked, especially to women and the LGBTQ+ community. Assembly Bill 286 is a feel-good that will have limited—if any—impact on reducing crime or keeping guns out of the hands of felons. You can buy a $20 grinder at The Home Depot to remove the serial number of any gun. Vote no on this bill to uphold our Second Amendment rights and our civil liberties.

SENATOR HARRIS:
Assemblywoman Jauregui's amendment would allow an incentive so people could get some value back on submitted firearms. If you grind off a gun's serial number, that is a federal crime. If we agree that is a crime, it should also be illegal to have a ghost gun without a serial number.

SENATOR PICKARD:
We heard a lot of testimony about underage people and felons buying parts for ghost guns. Would A.B. 286 make it illegal to sell ghost guns to such people? If not, why do we not try to nip that in the bud?

MR. ANTHONY:
There are penalties in NRS for selling firearms to minors and felons. The bill deals with gun parts that are not yet firearms.

SENATOR PICKARD:
Someone can take intermediate previously manufactured parts and fashion a firearm. If it is already illegal to provide guns or parts to fashion them to prohibited persons, why do we need the bill?

MS. MAGNUS:
Online businesses allow prohibited persons to buy gun parts with no questions asked through a loophole in Nevada law. If the resulting firearm lacks a serial number, buyers do not qualify for background checks and thus are not caught in illegal purchases.

SENATOR PICKARD:
Testifiers said you can obtain firearm parts without being subjected to a background check. However, firearms with lower receivers and frames with serial numbers do require a background check. The bill would make it impossible for law-abiding people to obtain the parts. We are shooting at the wrong target, not at people providing the parts and wherewithal to prohibited persons. The bill does not address that at all.

MS. MAGNUS:
I disagree. The bill would make it mandatory for lower receiver portions to have serial numbers. If online retailers are going to sell parts and pieces, serial numbers should be required. If you want to build a gun from parts bought on a website, it is not too much to require background checks, as per State law.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 286.

SENATOR OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HANSEN, PICKARD AND SETTELMEYER VOTED NO.)

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CHAIR SCHEIBLE:
We will close the work session on A.B. 286. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 3:11 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
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. 400	B	1	Assemblyman Steve Yeager	Support Statement from Paul Armentano, National Organization for the Reform of Marijuana Laws
A.B. 400	C	1	Assemblyman Steve Yeager	Chart: Serum Analysis of THC
A.B. 400	D	1	Assemblyman Steve Yeager	"Report From the Impaired Driving Safety Commission"
A.B. 400	E	1	Assemblyman Steve Yeager	"Marijuana-Impaired Driving: A Report to Congress"
A.B. 400	F	1	Assemblyman Steve Yeager	Proposed Amendment
A.B. 400	G	1	Scot Rutledge / Chamber of Cannabis	Support Statement
A.B. 424	H	1	Senator Dallas Harris	Proposed Amendment 3374
A.B. 424	I	1	Keith Lee / Nevada Judges of Limited Jurisdiction	Packet of Concerns
A.B. 424	J	1	Richard Glasson / Tahoe Township Justice Court, Douglas County	Opposition Statement
A.B. 23	K	1	Patrick Guinan	Work Session Document
A.B. 24	L	1	Patrick Guinan	Work Session Document
A.B. 25	M	1	Patrick Guinan	Work Session Document
A.B. 58	N	1	Patrick Guinan	Work Session Document
A.B. 59	O	1	Patrick Guinan	Work Session Document
A.B. 157	P	1	Patrick Guinan	Work Session Document
A.B. 406	Q	1	Patrick Guinan	Work Session Document

A.B. 158	R	1	Patrick Guinan	Work Session Document
A.B. 286	S	1	Patrick Guinan	Work Session Document