

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
May 13, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:02 p.m. on Thursday, May 13, 2021, Online and in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

GUEST LEGISLATORS PRESENT:

Assemblywoman Cecelia González (Assembly District No. 16)

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nicolas Anthony, Counsel
Pam King, Committee Secretary

OTHERS PRESENT:

Jensie Anderson, Legal Director, Rocky Mountain Innocence Center
Jennifer Noble, Nevada District Attorneys' Association
Jim Sullivan, Culinary Workers Union Local 226
Kendra Bertschy, Washoe County Public Defender's Office
John Piro, Clark County Public Defender's Office
Christine Saunders, Progressive Leadership Alliance of Nevada
Tonja Brown, Advocates for the Inmates and the Innocent
Nicholas Shepack, American Civil Liberties Union of Nevada

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Jim Hoffman, Nevada Attorneys for Criminal Justice
Annemarie Grant
Matthew Wilkie
Nathaniel Erb, National Innocence Project
Taylor Patterson, Native Voters Alliance of Nevada
Yessenia Moya
Erika Minaberry
Jainee Shepler
Mary Gilbert
Laura Martin, Progressive Leadership Alliance of Nevada
Holly Welborn, American Civil Liberties Union of Nevada
Jameelah Lewis
Courtney Jones
Micajah Daniels, Black Lives Matter, University of Nevada, Las Vegas
Enzer Austin III
Akiko Cooks, Mass Liberation Project

CHAIR SCHEIBLE:

We will start with the hearing on Assembly Bill (A.B.) 201.

ASSEMBLY BILL 201 (1st Reprint): Revises provisions relating to informants.
(BDR 14-777)

ASSEMBLYWOMAN CECILIA GONZÁLEZ (Assembly District No. 16):

I am here to present A.B. 201. I have provided a proposed conceptual amendment ([Exhibit B](#)).

With me today online is Jensie Anderson, the Legal Director of the Rocky Mountain Innocence Center.

Last Session, this Body passed A.B. No. 267 of the 80th Session, which compensated people who are wrongfully convicted. When DeMarlo Berry went to prison in 1994 for a murder he did not commit, it was a jailhouse informant who was an incriminating witness. Based on the informant's testimony, Mr. Berry was convicted and sentenced to life in prison.

However, in 2014, the informant admitted that he lied and received benefits for his testimony. Testimony from jailhouse informants is one of the leading

contributors to wrongful convictions, playing a role in nearly one in five of the 367 DNA-based exoneration cases nationwide.

Who is an informant? An informant is an individual who provides testimony or information about statements the defendant made while they were incarcerated together. Informants often receive a benefit from prosecutors for information, usually in the form of a plea bargain—a reduced sentence on their own criminal charge—or even a dismissal on their case. Informants also can receive financial incentives or other special benefits while in custody for their testimony.

I will turn the presentation over to Ms. Anderson. This is not an attack on district attorneys in Nevada; however, Assembly Bill 201 has provisions to prevent the wrongful incarceration of people using jailhouse informants.

JENSIE ANDERSON (Legal Director, Rocky Mountain Innocence Center):
I have provided a written support statement ([Exhibit C](#)).

We are a small innocence project that covers Utah, Wyoming and Nevada and work to right wrongful convictions in those jurisdictions as well as prevent them in the first place. Assembly Bill 201 goes a long way in doing that.

The district attorneys have given us incredible feedback on this bill, coming to an agreement on what would be best to support not only the wrongfully convicted but to ensure that district attorneys are able to use informants when they are reliable and protect those informants if they actually provide testimony.

As Assemblywoman González stated, about 10 percent of cases of DNA exonerations on the National Registry of Exonerations is about 20 percent. Of the 2,700 exonerations that have happened nationwide by the use of both DNA and non-DNA, about 10 percent of those involved jailhouse informants who did not tell the truth. Nevada is not immune from that. About 15 percent of the exonerations that have taken place in Nevada have included jailhouse informants.

One reason I am here is because I was one of Mr. Berry's attorneys. Mr. Berry, as Assemblywoman González told you, was wrongfully convicted of murder when he was 19 years old.

He was convicted exclusively on the testimony of a jailhouse informant who claimed that Mr. Berry had confessed to him while they were in the holding cell together. There was no physical evidence tying him to the scene. Only one of the 13 eyewitnesses could identify Mr. Berry in a lineup. The rest said it was not him.

There really was a dearth of evidence except for this alleged confession. Richard Iden, who was the name of the informant, claimed that Mr. Berry confessed to him. In exchange for that testimony, he was given deals on a plethora of charges that were pending in both Clark and Washoe Counties.

Mr. Iden was flown home to Ohio to spend time with his ailing father, and he never disclosed that information in court. The defense never learned about that information and was unable to challenge him on the veracity of his testimony based on the deals that he was given or his desire to come home from prison even though he was a guilty man.

In that case in 2011, the actual perpetrator to that crime, Steven Jackson, confessed that he had committed the murder that Mr. Berry had been in prison for. In 2014, Mr. Iden finally came clean and admitted that he had lied on the witness stand, received several benefits and that he had never even spoken to Mr. Berry. The first time he saw Mr. Berry was in the courtroom when he testified against him.

After fighting for Mr. Berry's release for four years, I worked with the newly formed Clark County Conviction Review Unit at the District Attorney's Office, and Mr. Berry was released, an innocent man, but only after spending 24 years in prison.

In 2020, he was issued a finding of factual innocence, and he is now living as a free man. Those 24 years could have been avoided had a law like A.B. 201 been in place. It points out the idea that a jailhouse informant's testimony is unreliable. In other words, jailhouse informants often have motivation to lie. It is important to know what deals an informant may be receiving when he or she says a crime happened and is recorded. This allows prosecutors to track that kind of testimony and know if someone is trying to be a jailhouse informant.

Assembly Bill 201 protects everyone in the criminal justice system. It protects prosecutors from convictions being overturned on grounds that information was

not disclosed, and it allows them to more thoroughly vet their witnesses. It allows the defense to have that information and then make decisions about how they are going to deal with the jailhouse informant. It also helps defendants. It makes sure that if they are innocent, the likelihood of them being wrongfully convicted on the testimony of jailhouse informants goes down. If a jailhouse informant is telling the truth, it protects everyone in the system—the public, victims—so all that information is available and transparent.

This bill allows for transparency and allows for the tracking of these kinds of individuals who give this type of testimony. It requires that information be given transparently to the defense so that wrongful convictions are avoided and rightful convictions are not overturned.

CHAIR SCHEIBLE:

I have a couple of questions. I know that the text of the amendment does not say jailhouse informants, but it does define the informant as someone who allegedly received this information when they were in custody with the person who allegedly made the confession.

I want to confirm that we are talking about informants who are offering to provide information from custody, not talking about controlled buys, confidential informants or people who are just arrested and are trying to provide information from outside.

ASSEMBLYWOMAN GONZÁLEZ:

That is correct. The definition is just to informants who are incarcerated. We worked with Chair Scheible, the district attorney's office and the public defender's office to make sure that the definition is only for people who are incarcerated together at the same time who may be making these statements.

CHAIR SCHEIBLE:

This is in addition to the rules of evidence that already apply to a hearsay exception to statements made by someone because we are not talking about a percipient witness. It would be an unusual circumstance where someone is both a jailhouse informant and a percipient witness. Right?

ASSEMBLYWOMAN GONZÁLEZ:

Yes. Jennifer Noble is here to better answer that question because I do not practice law.

JENNIFER NOBLE (Nevada District Attorneys' Association):

Yes, Senator Scheible, this would not pertain to percipient witnesses. It is not designed to replace or extend the cases of *Brady v. Maryland*, 373 U.S. 83, 87 (1963) and *Giglio v. United States*, 405 U.S. 150, 154 (1972).

CHAIR SCHEIBLE:

I think the one question I still have is about the benefits that are conferred and the cooperation agreement. The way that I am reading it, the information that the defense is entitled to and has to be kept by the district attorney's office has to do with the benefits that are written into a cooperation agreement.

I want to make sure that we are specific about that because, in my experience, someone who serves as an informant may have other benefits that are not conferred by the district attorney's office but that result from having been cooperative in a case.

For example, when someone testifies in court, a judge may look upon that favorably. Some people may say that being transported to the courthouse to give testimony is a benefit, but it is not if the informant has not specifically negotiated as part of their agreement that the transportation to the courthouse is one of the perks of being an informant. I want to make sure that we are not opening up the door to require anything and everything under the sun be included.

MS. NOBLE:

Yes, part of the purpose of these amendments is to make sure that we were not including potential benefits or something that a judge might see in terms of the validity or valor to what an informant did. We are talking about a contract, a bargain for exchange between a district attorney's office and an incarcerated person who learned information while they were incarcerated. That is what this is designed to do.

CHAIR SCHEIBLE:

I am not sure if I mentioned it in this Committee before, but I know in conversations about this I have mentioned that at the Clark County District Attorney's Office, we had a jailhouse informant policy. We cannot just call informants in like any other witness; we have to go through an approval process.

Does this mirror or follow what are the generally accepted jailhouse informant policies in Nevada and nationwide?

Ms. NOBLE:

Yes, that is correct. What this bill is really designed to do is to make sure the policies already adopted by the vast majority of district attorney's offices throughout our State survive from administration to administration. This information is tracked so that it can be disclosed appropriately.

CHAIR SCHEIBLE:

This information has to be maintained in some kind of database. Who has access to that database?

Ms. NOBLE:

The persons who would have access to that database would be district attorney personnel, investigations personnel and district attorneys.

SENATOR HANSEN:

My question would be for Mr. Berry's attorney because you mentioned that the informant got all of these perks, but the district attorney never gave any of that information to you? Is it required now under the new policies or even at the time when they make those sort of arrangements with an informant the defense attorneys are notified of what the perks are?

Ms. ANDERSON:

Yes, at the time of trial I was not Mr. Berry's attorney. I was only his attorney in the innocence proceeding in the late 2000s.

At the time of trial this should have been disclosed under the Brady Law, which is law that requires any exculpatory evidence be disclosed to the defense.

Unfortunately, it was not disclosed, and Mr. Iden lied on the stand about receiving any benefit. So this was a failure of the system on the whole. As we did our investigation, we were able to learn about this fact. That is why we approached Mr. Iden to speak with him and he ultimately recanted his testimony. By then, we had already had a confession from the actual perpetrator.

Yes, this is information that should be turned over. And as Ms. Noble said, Assembly Bill 201 simply codifies what is required constitutionally and what is actually happening in the majority of district attorney's offices in Nevada.

SENATOR HANSEN:

The question I have is: you mentioned the system failed, but I do not quite buy it is the system at fault because the system clearly had something in place. It was an individual or individuals in the prosecution side of this who made a conscious decision not to share that. I am not an attorney, and I do not practice in these areas.

When an individual on the prosecution side deliberately ignores or fails to disclose certain information that can exonerate the individual, are there actually any penalties for the lawyers?

If a guy like Mr. Berry goes to prison for 22 years, and then the State of Nevada has to pay \$5 million, not to mention ruining the man's life and everything else, it seems like the system was at fault, but nobody in that system is held accountable?

MS. ANDERSON:

Unfortunately, no. There are no penalties under the Brady Law or under any laws. There have been, in egregious cases around the Country, instances where an individual who withheld information, whether it was the informant or someone with the police or the prosecutors, there have been some consequences for them, issues of disbarment and obstruction of justice kinds of charges.

Generally there is no consequence. In that case, the system failed and the system was on the prosecutors' side, whether that was police and/or prosecutors or an investigator for the prosecutor's office.

For the most part, prosecutors are good people who want justice served just as much as we in the defense community or in the innocence community do. Our hope is that by agreeing and working through this bill together we can avoid the kinds of things that happened in Mr. Berry's case.

SENATOR HANSEN:

I got it. I am a big defender of the police all the time, but that does not mean there are not rogue cops, and I would assume that is also true on the prosecution side. When those situations do arise, and Mr. Berry's case has disturbed me since the day I heard about it and still does, it is a real black eye on the State of Nevada. Nobody seems to be held accountable other than the taxpayers who have to reimburse the man.

MS. NOBLE:

As you all know, I am from the Washoe County District Attorney's office. I did not litigate Mr. Berry's case, and my knowledge of it is limited. However, Senator Hansen, it is important to keep in mind that a number of factors contributed to what happened in that case including the fact that the informant in question perjured himself and later recanted his testimony.

A variety of factors, including misidentification and other things, conspired to create that wrongful conviction.

I am not aware of any evidence in that case that suggests evidence was willfully held back from the defense.

SENATOR PICKARD:

The questioning and talk of accountability spurred one question in my mind. We are creating a list or database of informants so we can keep track of this data, which I support in theory. There is no penalty for wrongful disclosure. That may be elsewhere.

What if someone, either on the police side, the prosecutor's side or the defense side, willfully discloses the list? If people gain access to that database and then disclose it, you are putting people's lives in danger.

What would be the penalty? It may exist elsewhere in law, but how do we hold someone accountable for a wrongful disclosure of that information?

MS. NOBLE:

It depends on the circumstances. You have to keep in mind that district attorney's offices have had this information and have continued to hold this information since we first started the justice system. So we are very careful to make sure our disclosures are within the law.

In terms of defense counsel, disclosing it to their clients or disclosing it to others who should not know about it would be something that would be part of a civil action. I am not aware of any criminal charge that would apply, but I would say that the defense attorneys I work with in this State and the public defenders I have worked with in this building are trustworthy individuals who are not going to break the law and disclose information that could hurt someone. We are all privy to that type of information, and that is part of our oaths.

SENATOR PICKARD:

Sure. I think the events of the last year suggest that there may be some room for consideration of that one individual who steps out of line. Anyway, it was just a thought that came up. I did not see it. I thought maybe there was something else in law that could help contain that. Maybe it is food for thought for the future.

MS. NOBLE:

I think this bill will help ensure that this type of information, which is relevant to impeachment of a witness, is disclosed appropriately and safely. We are in full support of A.B. 201.

JIM SULLIVAN (Culinary Workers Union Local 226):

We support A.B. 201 because it would protect Nevadans against false jailhouse informant testimony, which has led to wrongful convictions and cost the State millions of dollars.

During the 2019 Legislative Session, we heard the heartbreaking story of Mr. Berry, who did 22 years in prison for a crime he did not commit, largely due to false jailhouse informant testimony. Unfortunately, Mr. Berry is not alone. Bad jailhouse informant testimony has also played a part in the exoneration of Fred Steese, who served over 20 years for a crime he did not commit.

Jailhouse informants played a big role in all of these cases. Nevadans need legislation to ensure that this injustice never happens again. Assembly Bill 201 does just that. Tracking jailhouse informant use and requiring prosecutors to disclose specific details about jailhouse informants, such as the details of any deal they received in exchange for testimony and any other cases that they may have benefitted from testimony, is smart policy.

This will ensure that no other Nevadan has years of their life stolen due to wrongful convictions.

Last Session, the Senate Judiciary Committee did the right thing by ensuring exonerated Nevadans were compensated for the time they served due to wrongful convictions. Now the State must make sure that no other Nevadans have decades of their life taken from them because of false testimony from jailhouse informants.

Assembly Bill 201 will help make that a reality, and the Culinary Workers Union Local 226 urges the Nevada Legislature to pass A.B. 201.

KENDRA BERTSCHY (Washoe County Public Defender's Office):

I will not go into too many reasons, since you have already heard them, as to why it is important to ensure that we do not wrongfully convict an innocent person.

I would add a remark regarding Senator Pickard's question. I have spoken to bar counsel because there are some issues involved, and we have a duty to disclose information. Assembly Bill 201 does provide requirements where a court could order us to not disclose that information; I am not talking about the database. I am talking about specific information where the court has a hearing and has a discussion as to why it is appropriate to require the defense attorney to not provide information about specific findings in a written order. That protects defense attorneys, and we are not in violation of our ethical duties to represent our clients. We urge your support of this bill.

JOHN PIRO (Clark County Public Defender's Office):

We support A.B. 201. This is an important measure—jailhouse informant testimony. As you know, Senator Hansen, the State was seeking death against Mr. Berry. If Nevada was not slow on the death penalty, like Texas is, we could have executed an innocent man.

The testimony of a jailhouse informant in Texas, led to the execution of Cameron Todd Willingham. *The New Yorker* did a long article on it in 2009. He was innocent, and the arson investigator who looked at it is one of the top guys in the Nation. Other forensic arson investigators stated that if that guy says it is not arson, it is not arson. Texas likely executed an innocent man, and Nevada was almost at risk of doing the same thing.

This is an important measure that protects the integrity of the justice system. As for Senator Pickard's question, I do not know many attorneys in my profession who have taken the oath and would let something like that get out—putting their bar license at risk or other people at risk, even for some competitive advantage. That is not what we do in our State.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):

I want to echo the sentiments of those who spoke before me and add our support to A.B. 201. We urge you to act to ensure these safeguards are put in place.

TONJA BROWN (Advocates for the Inmates and the Innocent):

We strongly support A.B. 201. When we think of an informant, we think of a jailhouse informant. Seldom do we ever think of a secret witness as an informant. This type of an informant has a financial gain. They can only receive money if there is a conviction. Sometimes the district attorney and law enforcement agencies may not be aware or have any knowledge that their witness is a secret witness, and if the conviction goes through, will receive money. After trial, they could learn their witness was a possible secret witness.

NICHOLAS SHEPACK (American Civil Liberties Union of Nevada):

We support A.B. 201. While we preferred the version of the bill in the Assembly. We still think this bill is a good piece of legislation and will do a lot to help protect people from wrongful conviction due to jailhouse informants. Jailhouse informants are problematic and untrustworthy, as we saw in the case of Mr. Berry and the 181 other wrongful convictions that were overturned. A jailhouse informant not being truthful can lead to someone being placed on death row. Any state that continues to maintain the barbaric, racist and archaic practice of capital punishment must do everything in its power to ensure that we are not wrongfully convicting individuals. This bill will help with that.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):

We support A.B. 201. The jury system is based on the idea that if we give the facts to an impartial group of community members, they will figure out what happened and give us a just result. But for that process to work, we need to make sure the jury has all of the information. If they are not aware that a witness is actually a jailhouse informant who is getting a lighter sentence in exchange for testimony, they are missing a piece of substantial information.

That makes it impossible for the jury to make an accurate judgment, and it is harder for them to do justice.

By requiring this information be disclosed to a jury, A.B. 201 will help to make our system more accurate and just. We support this goal and this bill.

ANNEMARIE GRANT:

I support A.B. 201. I echo the prior sentiments. I do agree with Ms. Brown that secret witness testimony should be included as documents in the case. At Washoe County DA's office, it was known that one of the witnesses who testified at trial was an alleged secret witness. The witness contacted the DA's office because she had been contacted by a private investigator about being a secret witness. The defense had a hearing coming up. She asked the DA's office what to do. This witness did not go to work and she did not return to her home until after the hearing. The witness could not be served with a subpoena and thus did not have to answer under oath if she was paid for her testimony as a secret witness. Please support this bill.

MATTHEW WILKIE:

Thank you so much for hearing this bill. I am not as eloquent as many of the other testifiers before me, but I do urge your support of A.B. 201. With proper facts, we do not want to send people to jail, death penalty especially, for crimes they did not commit. It is vital to the preservation of innocent individuals. We see it all the time, people years down the line are innocent. This bill could be one step further toward that.

NATHANIEL ERB (National Innocence Project):

I would like to reiterate the comments and answers given by my colleagues to a couple of questions specifically around which informants are going to be covered by the legislation.

Section 4 of A.B. 201 defines an informant as someone who provides testimony and is going to be receiving benefits. It would only be those particular informants.

To the question around disclosure of evidence, the records of jailhouse informants would be entirely held by the district attorney's office unless there was a breach of protocol for hacking or something else where folks unlawfully access information in the district attorney's office the records and those lists

would never be handed out. According to the regulations of the bill, it would only be information as part of discovery.

ASSEMBLYWOMAN GONZÁLEZ:

I wanted to say thank you to the Nevada District Attorneys Association, the Innocence Project, the public defenders, the Culinary Workers Union Local 226 and everyone who worked diligently to get us to a point where everyone is comfortable with A.B. 201. Again, this is to prevent the wrongful convictions and protections for all parties involved when using jailhouse informants. I urge your support on this bill.

CHAIR SCHEIBLE:

I will close the hearing on A.B. 201. We are going to move on to a work session. I will now turn it over to Patrick Guinan, who will walk us through the documents.

PATRICK GUINAN (Policy Analyst):

We have four bills on the work session. We are going to start with Assembly Bill (A.B.) 7. This bill revises the provisions related to gaming. It is an Assembly Judiciary Committee bill brought on behalf of the Nevada Gaming Control Board. This bill was brought forward on April 22 as referenced in the work session document ([Exhibit D](#)).

ASSEMBLY BILL 7 (1st Reprint): Revises provisions related to gaming.
(BDR 41-279)

CHAIR SCHEIBLE:

Any questions on A.B. 7? I will accept a motion to amend and do pass.

SENATOR OHRENSCHALL MOVED TO AMEND AND DO PASS AS AMENDED A.B. 7.

SENATOR PICKARD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SCHEIBLE:

That brings us to A.B. 115.

ASSEMBLY BILL 115 (1st Reprint): Revises provisions relating to domestic relations. (BDR 11-118)

MR. GUINAN:

We are at A.B. 115, first reprint. This bill is sponsored by Assemblywoman Rochelle T. Nguyen and others. This bill was heard on April 26 and it relates to domestic relations as described in the work session document ([Exhibit E](#)).

Assembly Bill 115 authorizes one or more adults to petition a court for the adoption of a child. Each prospective adopting adult and legal parents seeking to retain his or her parental rights must be joined as a petitioner. The court may waive the hearing on petition under certain circumstances and determine that a child has a legal relationship with more than two persons. The petition must state that there are no known signs that the child is experiencing victimization from human trafficking, exploitation or abuse.

Assemblywoman Nguyen has offered a conceptual amendment that is attached to the work document. The intent of the amendment is to clarify in section 5.2 that each prospective adopting adult and each consenting legal parent seeking to retain his or her parental rights must be considered by the court as a joint petitioner.

To clarify, in section 5.8 that any parent who has signed a relinquishment shall not exercise or have any rights over the adopted child or the property of the adopted child.

CHAIR SCHEIBLE:

Do we have any questions on A.B. 115?

SENATOR PICKARD:

Not so much a question but a comment. I talked to Kimberly Surratt of the Nevada Justice Association at length about this. The inclusion of language in the amendment of a joint petitioner without creating a mechanism whereby a joint petition is authorized is going to be particularly problematic for the courts. Given that the language is broad enough that it is going to include more than

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just the situations where there is a consent agreement to the deal, I will not be able to support A.B. 115 as written.

CHAIR SCHEIBLE:

Any other questions or comments before I accept a motion to amend and do pass?

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 115.

SENATOR OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS HANSEN, PICKARD AND SETTELMAYER VOTED NO.)

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CHAIR SCHEIBLE:

We will now move to A.B. 143.

ASSEMBLY BILL 143 (2nd Reprint): Establishes provisions concerning victims of human trafficking. (BDR 16-856)

MR. GUINAN:

Assembly Bill 143 was heard in this Committee on May 10 as referenced from the work session document ([Exhibit F](#)). It was sponsored by Assemblywoman Lisa Krasner, Senator Pat Spearman and others.

CHAIR SCHEIBLE:

I would accept a motion to do pass.

SENATOR OHRENSCHALL MOVED TO DO PASS A.B. 143.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SCHEIBLE:
This brings us to A.B. 182.

MR. GUINAN:
Assembly Bill 182, sponsored by Assemblywoman Jill Tolles and others, was heard in Committee on May 10 as referenced in the work session document ([Exhibit G](#)).

ASSEMBLY BILL 182 (1st Reprint): Revises the elements of the crime of advancing prostitution. (BDR 15-744)

CHAIR SCHEIBLE:
Any questions? I would accept a motion to amend and do pass.

SENATOR PICKARD MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 182.

SENATOR HANSEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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MR. PIRO:
As we know, sometimes things "die on the altar" close to deadline day. As we have been informed, there will be no route to successfully move forward with A.B. 395, even if amended.

ASSEMBLY BILL 395 (1st Reprint): Abolishes capital punishment. (BDR 15-580)

I wish we lived in a world where people did not harm each other, but sadly we are not there. As a public defender, every day I am confronted with the question of how our society punishes the most broken among us. Without a doubt, people who have harmed another person should be held accountable, but this accountability must be fair. The true question is not whether a person deserves to die, but whether we as a society, deserve to kill them. To answer this question, we have to take a look at a few hard truths because truth and reconciliation are sequential, and you cannot have reconciliation without the truth first.

The truth is that the authority to kill someone who is in prison for life and is no longer an immediate threat to others is an awesome power. That power must be exercised humanely, fairly and reliably. No matter how we have tried to accomplish that in the State of Nevada, we have been unable to do so.

For every nine people executed, one person has been found to be completely innocent. That is a shocking rate of error. Some of us would not live through this Session if one out of nine planes crashed, and I would not fly up here. I would drive up every weekend.

If you think convicting an innocent person is just a national problem, it is not. Here we did it to Mr. Berry when the State sought to kill him. The State sought to kill Mr. Steese. The State tried Cathy Woods for murder. These are innocent people in the State of Nevada who were freed and then paid—Nevada paid. Nevada paid out millions of dollars later, but they could have been killed.

It is hard to put into words how disheartening that is. I am sure a lot of people feel that way when they bring things up. I am sure all of you fought for election because you came up here to fight for things you believe in, and we do the same when we come up here.

Perhaps since the Governor said a robust discussion is necessary, perhaps there is a way out with a moratorium. If we are going to discuss things, let us not kill someone in the middle of discussing things about what is right and appropriate. I would ask this Body to consider a moratorium.

MS. BERTSCHY:

I would like to echo what Mr. Piro said. One of the most difficult things as a defense attorney is to go to trial on someone who is innocent. I cannot imagine doing that with someone who is facing the death penalty, which is why we have been working so diligently this Session to try to abolish the death penalty. We are willing to continue to work on ways to fix our broken system.

Capital punishment is a racially discriminatory, arbitrary and archaic system with grave costs both morally and financially because it is fraught with error.

Since 1973, 185 individuals across the Nation have been sentenced to death and been exonerated, including Roberto Miranda and Paul Browning here in Nevada, who spent decades on Nevada's death row for crimes they did not

commit. Many others have had their sentences commuted to life imprisonment because of serious doubts about their guilt. Tragically, some have been executed even despite serious concerns regarding their innocence. Once an execution has been carried out, there is no chance for correcting those mistakes.

You can see on the Legislative website, all of the letters from individuals, businesses, organizations urging the Assembly Committee to pass A.B. 395. I will point directly to the letters which explained why it is necessary to pass it at this time.

The death penalty has also fallen out of favor nationally, including within our own great State. We spent two sessions talking about Mr. Berry. It is important to bring him up again as to why we need to do something now. The time is now, and we urge this Committee to consider this bill.

TAYLOR PATTERSON (Native Voters Alliance of Nevada):

I am a member of the Bishop Paiute Tribe, and I echo the sentiments that were stated earlier to pass A.B. 395. It is important for the constituency and clear that all of us need to have this conversation.

YESENIA MOYA:

I would like to echo the sentiments handed down. If you listen to the constituency, they need to have a hearing on A.B. 395. We ask for a moratorium on the death penalty so that these conversations can be had. This bill is something that has been supported all over Nevada. This is the choice of the people. Do not take it away.

ERIKA MINABERRY:

It is time for us to hear a death penalty bill. We elected you to do something important for us. I personally knocked on thousands of doors in 2018 and 2020 to get you all elected. I cried in 2018 when we had the majority and now it is like you guys are playing the best game of Secret Hitler ever because I cannot tell which one of you is a fascist and which one is not.

The death penalty is no different than a continuation of lynchings, and that is pretty strange fruit that we are allowing in Nevada. It is a disgrace if you guys do not allow this bill to be heard.

JAINEE SHEPLER:

I would like to start off by saying that I am disgusted with this Committee passing A.B. 286. I think you guys need the consent of the Governor and you should put it on the ballot; but of course, you do not care what any of us think. I heard you guys discussing A.B. 400 and A.B. 424. You seemed very concerned with the constitutional rights and liberties of criminals. When discussing A.B. 400, someone said that just having marijuana in your system does not mean you are guilty. The same goes with A.B. 286, just having homebuilt fire arms does not make you guilty.

ASSEMBLY BILL 286 (1st Reprint): Prohibits certain acts relating to firearms.
(BDR 15-21)

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

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

Senator Harris, when presenting A.B. 424, stated it is not always easy letting people have their liberties. She was right. Maybe this makes some of you uncomfortable, but it is our constitutional right.

Legislation should not be born out of emotion and fear but based on facts. In a state with the strictest laws are the highest gun crime rates. In a city where there are gun laws, some crime rates have gone down. I was involved in an active shooter situation, so I know what chaos and horror feels like. Someone was also shot in my front yard.

One thing I had to come to grips with and realize was it was not the fault of the gun or the gun manufacturers, it was purely the person behind the act. When someone sets out to kill others, the person finds a way to do it. If it is not a gun, it will be a car, explosive device, knife or some other weapon.

I heard a lot of talking of ending gun violence. Gun violence and violence will never end. It has been going on since the beginning of time because some people are born bad.

Some of the people on this Committee have stereotyped those who make guns as criminals and extremists, and that is not true. It is not easy or cheap to build a gun at home. It requires much more than just parts. It requires expensive machinery to make the firearm, lots of patience and time.

As Martin Luther King said in 1963, one has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws.

MS. GRANT:

My brother was murdered by police in a mental health crisis. I had put in a public record request with the Washoe County District Attorney's Office. What I got out of that request was a dog and pony show. Since their inception in 2018, District Attorney Jennifer Noble testified to Assembly Judiciary 2017 regarding the Conviction Integrity Committee Unit. We need legislative and mandated reviews.

MARY GILBERT:

I am here to echo what you have been already hearing, the death penalty is a continuation of the American tradition of lynching. Every man should be given a hearing, and I also ask why none of you have the courage to do what is right? You have so much power in your positions. Use your power to command a hearing.

I also find it cowardly that no one would express solidarity with the Palestinians who are currently being exterminated. Please do better.

LAURA MARTIN (Progressive Leadership Alliance of Nevada):

I want to point out that in my home state of Colorado, all the Democrats who voted for repealing the death penalty were all reelected. I say that because it seems that sometimes a lot of these decisions are tough ones that we have to make are held hostage by people's political careers. We really have to ask ourselves if we want to be a State that kills people, or be responsible for the death of people who cause harm to the community instead of doing the tough work in getting to the root causes of why this happened in our State.

We have the death penalty now. It has not stopped anyone from being murdered. It still continues. The Nevada Coalition Against the Death Penalty have been doing this hard work for over 20 years, and they are members of our

organization. We have been having these conversations for decades with people who are directly impacted as victims, family survivors and who need to be heard and do not need to be ignored for an easy political way out.

It is embarrassing that our Legislature that prides itself in being diverse and women-led cannot get this right. I truly hope you listen to this community and not think that you can just have a reelection card. We will never forget if you kill this bill again.

HOLLY WELBORN (American Civil Liberties Union of Nevada):

This is a tough job that you all have. I am looking at some of these statements that we are writing and realizing that we found out something incredibly important to us just died without any clear notice. That is fine. I understand the pressure you face on a daily basis, and that it is never easy.

I think Ms. Martin brought up something compelling. All these movements, everything we have fought for through this Body, through local government advocacies and litigation, these processes take years. We would get through every other piece of legislation that moved through where we were ready to compromise and talk about something that gets a bit closer, and we did not have a chance or opportunity to do that this Session when people were ready.

I hope that we can continue talking about this. Mr. Piro brought up the idea of a moratorium or something in the future, to continue moving this forward when support for abolition is growing exponentially. It is time to act and do something. We hope that we can continue this conversation.

JAMEELAH LEWIS:

I am calling today to ask for a moratorium regarding A.B. 395. I would like to echo the same sentiments as everyone who spoke before me. It is invalidating, foolish and disrespectful for the Governor and the Committee to not support ending the death penalty—specifically because in Nevada it mostly disproportionately impacts Black and Brown votes.

The last time I called to ask you to support ending the death penalty, I begged you and pleaded you. Today I am not going to plead. Regardless of how you vote or whatever you do, if you are not supporting ending people dying while in incarceration, then you are part of the problem. Your hands are also in it.

I hope you do the right thing and push for the moratorium, but if you do not, remember where you stand and remember that elections are next year.

COURTNEY JONES:

Twenty-seven states still have the death penalty. Virginia became one of the first southern states to abolish it in 2021. I am asking you all to fight for this bill because we have a humane crisis on our hands that shows your constituents that you stand with the side of the Country that has historically been racist, discriminatory and unfair to Black communities and more. The death penalty has continually been shown to have immense amounts of racial bias in killing innocent people. Unfortunately, we have to bring in cops because that is all the Legislature seems to care about instead of human well-being and the right to our lives.

Eliminating the death penalty would leave millions of dollars a year to invest in programs that are proven to prevent violent crimes, create safer communities and support those who are harmed by crime and violence. Taking someone's life is nothing small yet continually has impacted families who tell you that an eye for an eye is not the way to go, but an eye for an eye makes the whole world blind.

I urge you all to understand and act on community investment to help uplift people so that they can take a step away from violence and return to their community and invest in the programs to stop the violence.

As our representatives, if you do not fight for this bill, that is blood on your hands.

MS. BROWN:

I would like to echo the previous comments made regarding A.B. 395. I would like to include another person's name that most people are not aware of, although he was not in Nevada, Ray Krone. Mr. Krone was convicted twice. The first time he received the death penalty. His conviction was overturned and received a second trial, at which time he was found guilty again, but the judge in the case could not give him the death penalty. There was something about the case that bothered him, and he did not want to execute an innocent man should it turn out that way.

Ultimately, Mr. Krone wound up getting DNA testing and was exonerated. The reason I say it was almost a Nevada case is because the main witness was a forensic dentist, Nevada Senator Raymond Rawson. It was Dr. Rawson's testimony that got Mr. Krone convicted twice.

I want to personally speak on another issue about my late brother, who spent 21 years in prison for a crime he did not commit. Fortunately no one was murdered. There is no doubt in my mind that he would have received the death penalty and would be on death row. It was only to find out 21 years later that the district attorney's office withheld all the exculpatory evidence. That was discovered in 2009 when the judge ordered District Attorney Dick Gammick to turn over the entire file.

My brother and Mr. Krone would have gotten the death penalty had the evidence not been turned over.

MICAJAH DANIELS (Black Lives Matter, University of Las Vegas Nevada):
Since the Black Lives Matter protests, everyone questioned what Black Lives Matter is. What does it mean? Maybe you have said the phrase or been in solidarity with it, but when it comes to racism being diagnosed as a public health issue, did you stand up and give a hearing to address the accepted Black deaths?

We are not here asking for the death penalty for the people who have been using the death penalty to murder the people in our communities. We are asking for a better way. People are not redeemable. What does it say about how redeemable are the people who are currently in office not even addressing the issue?

ENZER AUSTIN III:

The Lord has told you what is good. This is what he requires of you, to do what is right, to have mercy and to walk humbly before your God. Our request is that you would honor this request from the prophet who spoke as an oracle for God with the same request that we would love justice through mercy and walk humbly.

We have challenges here when it comes to the Black Lives Matter issue. People have stood up and said that they are in solidarity with the movement for Black

lives but are not taking into account the way this disproportionately affects those who God has chosen to kiss more with the sun.

It tells us in scripture the prophet Isaiah said in the sixth chapter and eighth verse, "He heard the Lord asking, who should I send for me?" And the response was, "Here am I Lord, send me."

Is there anyone with moral conviction on this Committee to say I am the one who will stand in the gap for those who have the very least to offer in the situation?

Lastly, I will ask you about the American Rescue Plan that lays out a way to reduce gun violence and to reduce violent crimes in our land. Of all of the evidence-based things that are laid out, the death penalty is not one of them.

If we are looking at the evidence as to how to reduce violent crimes, where does this fall? Grace and peace to my brothers and sisters from Islam, who are Christian and Shalom to my brothers and sisters who follow Judaism.

AKIKO COOKS (Mass Liberation Project):

If you are for the death penalty and anyone who helps carry out the death penalty, you are just as guilty as those you are killing. You need to think about that. How do we go straight into killing people? How do we go straight into, you did this wrong so I am going to kill you? None of us have that power, and none of you have that power. None of you should want that power. The power you should want is to fix the root of each problem and ask why people are ending up where they are. Stop killing people or pay for it.

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CHAIR SCHEIBLE:

This concludes our meeting. Until our meeting tomorrow, we are adjourned at 2:33 p.m.

RESPECTFULLY SUBMITTED:

Pam King,
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. 201	B	1	Assemblywoman Cecilia González	Conceptual Amendment
A.B. 201	C	1	Jensie Anderson / Rocky Mountain Innocence Center, Innocence Project	Support Statement
A.B. 7	D	1	Patrick Guinan	Work Session Document
A.B. 115	E	1	Patrick Guinan	Work Session Document
A.B. 143	F	1	Patrick Guinan	Work Session Document
A.B. 182	G	1	Patrick Guinan	Work Session Document