MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-first Session
February 17, 2021

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:01 p.m. on Wednesday, February 17, 2021, Online. 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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Theresa Haar, Special Assistant Attorney General, Office of the Attorney General
Jessica Adair, Chief of Staff, Office of the Attorney General
Marcos Lopez, Americans for Prosperity Nevada
John Piro, Clark County Public Defender's Office
Sarah Hawkins, President, Nevada Attorneys for Criminal Justice
Kendra Bertschy, Washoe County Public Defender's Office
Emily Driscoll, National Lawyers Guild
Aaron Ford, Attorney General
William H. Scott, Jr., Chief Investigator, Office of the Attorney General
Kyle George, First Assistant Attorney General, Office of the Attorney General
Chris Wang

Holly Welborn, American Civil Liberties Union of Nevada
Denise Bolanos, Return Strong
Christine Saunders, Progressive Leadership Alliance of Nevada
Sequila Angkratok, Diverse Social Action Group
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Courtney Jones
John Jones, Clark County District Attorney's Office; Nevada District Attorneys Association
Annemarie Grant
Yesenia Moya
Desiree Smith, Founder and President, More Than a Hashtag LV
Kim Perondi, Deputy of Commercial Recordings, Office of the Secretary of State

CHAIR SCHEIBLE:
I will limit testimony on each bill and each position to ten minutes to allow the Committee ample time to ask questions of the presenters and subject matter experts. Anyone intending to testify today may submit written comments. Each person will have two minutes to testify; you may also simply state you agree with a former testifier. When the hearings for the bills are concluded, there will be time for public comment. To submit written testimony during or after the meeting, the email address is SenJUD@sen.state.nv.us.

I will now open the hearing on Senate Bill (S.B.) 41.

SENATE BILL 41: Revises provisions relating to orders authorizing the use of a pen register or trap and trace device. (BDR 14-412)

THERESA HAAR, (Special Assistant Attorney General, Office of the Attorney General):
Nevada Revised Statutes (NRS) 179.530 states the district court has the jurisdiction to issue orders authorizing the use of pen registers or trap and trace devices. A pen register identifies all outgoing phone numbers dialed by a telephone, and a trap and trace device identifies all incoming calls to a telephone. The contents of these phone calls or communications are not recorded in a pin register or a trap and trace device.

Senate Bill 41 proposes to make a few changes to the mechanical application but does not make changes to the content of the application. The district court issues an order upon application by a member of the district attorney's office or

the Office of the Attorney General. The order is based on an affidavit from a peace officer. As defined in statute a peace officer who is able to submit a supporting affidavit is defined as sheriffs and their deputies, Department of Public Safety personnel, police officers of cities and towns, Nevada Gaming Control Board agents, Attorney General investigators, district attorney office investigators and the Office of the Inspector General for the Department of Corrections. This bill seeks to include federal officers who are members of a task force with State and local law enforcement officers in the definition of peace officer.

Senate Bill 41 also seeks to bring the mechanism of submitting the affidavit and the application to the modern world. As we have seen in the last year with Covid-19 and physical access to courthouses being limited, it is important to allow for electronic submission of the application and the supporting affidavit. Under law, there is no requirement that electronic submission is permissible and practices vary from court to court. Passage of this bill creates a consistent process Statewide.

Finally, this bill eliminates placing the effective date of each change specified through the federal statutes into NRS 179.530, subsection 1 and incorporating it by reference to avoid changing the date in the NRS each time the federal law is revised.

SENATOR HARRIS:
What are the requirements in federal law? Why is the language "as those provisions existed on July 7, 1989" deleted?

MS. HAAR:
Title 18 USC sections 3121 through 3127 require a certification by an applicant that the information likely to be obtained is relevant to an ongoing criminal investigation. In 1979 the United States Supreme Court (USSC) ruled that no person has a reasonable expectation of privacy in the phone numbers that are dialed. That is because it is not personal information, but is information relating to a utility company to complete your transaction. It is a low burden of proof and a low application standard. However, the information being obtained is not personal information but a required probable cause under a warrant.

Regarding the date, certain provisions of 18 USC Chapter 206 have not been updated since 2008, and others since 2016, which means that Nevada must

change the NRS to comply with the language in federal code. The changes in S.B. 41 will keep Nevada in compliance with the federal code without the necessity of changing the statutes.

SENATOR HANSEN:
I am not familiar with the terminology. When you say a trap and trace device, is that the same as the Stingray-type technology that the USSC recently ruled police cannot use unless they have a warrant?

MS. HAAR:
Stingray or Triggerfish are wiretap devices that allow gathering the content of the communications in real time. The burden of proof is higher, so under federal law, there must be probable cause to believe that a crime has been committed, is being committed or will be committed in the future. Probable cause must exist to believe that the contents of the communication being intercepted contains evidence of the crime. The applicant for the warrant must also demonstrate that all less-intrusive methods have been attempted and have failed or are unsafe to pursue.

The equipment described in this bill does not obtain any content or written communications. It is used to convey general information to the utility company of the phone number when dialing out and phone numbers dialing in.

SENATOR HANSEN:
Are you raising the standard to make it more difficult to do that? What are we getting at here? Law enforcement, in spite of the USSC ruling that there is protection against unreasonable searches and seizures, is still using that technology to trace people, not just in communication but literally to trace their movements in different locations. I would like to find out more about the trap and trace side of this and whether we are codifying existing federal law or adding a new level to make it more difficult to use this sort of technology in the absence of a search warrant.

MS. HAAR:
Senate Bill 41 concentrates on a pen register. A pen register and a trap and trace are different from anything that records conversations or live data. Location data that can register on a trap and trace device could include historical cell tower location data from the cell tower from which the call emanates. It does not tell the caller's actual location and it is not real time. It is

simply telephone company information, not personal information. We are not making changes to the content of the application or the burden of proof required. We are only changing some of the mechanics so members of the task force who are federal officers and already involved in the criminal investigation do not have to relate the information gathered during the investigation to a State or local law enforcement officer. They can apply for an affidavit themselves using that information. We are not lowering any of the burdens; we are only streamlining some of the preparation of the application.

SENATOR OHRENSCHALL:
Under NRS 179.530, federal officers are on these multijurisdictional task forces. Is there a debate about pen register or track and tracer? I am trying to understand what problem this is trying to fix.

MS. HAAR:
The multijurisdictional task force must communicate information it has gathered to a local task force member to put into an affidavit in support of the application. The task force is unable to be the applicant. The local officer would be the one to draft the affidavit in support of the application. This bill would remove the middle step of conveying the information.

SENATOR SETTELMEYER:
I am concerned about this metadata being collected through the concept of the criminal case. How would that information be conveyed to the court? Would it be electronically transmitted, or how is that done considering there may be other uses for this information? Also, you are indicating this would change how the application is submitted. What safety protocol and security do we have to make sure this metadata is not intercepted or utilized by somebody else?

JESSICA ADAIR (Chief of Staff, Office of the Attorney General):
The only thing this bill does is allow electronic submission throughout the system. Normal processes would not be changed.

MARCOS LOPEZ (Americans for Prosperity Nevada):
This bill is not earthshaking, but it is a positive step in the right direction because federal laws change often, and this will give Nevada additional procedural protection. Allowing the electronic submission provides the advantage necessary to keep up with today's technology. I hope that you vote in favor of this legislation.

JOHN PIRO (Clark County Public Defender's Office):
We are in opposition at this point. We are still in discussions with the Attorney General's Office about potential amendments to this bill. Per the rules of the Committee, we are in opposition but hope to move out of the opposing position. We have no problem making things electronic and speeding up the process, but there are things to discuss to make us more comfortable with this legislation.

SARAH HAWKINS (President, Nevada Attorneys for Criminal Justice):
I am speaking in opposition to S.B. 41. To echo Mr. Piro's comments, we hope that we can remove our opposition to this bill. Talks with the bill sponsors are ongoing. Our primary concern is the lack of clarity in protecting privacy interests between the federal law and Nevada law. Examples: There is no general prohibition for using pen registers and trap and trace devices in Nevada law. The federal law has a general prohibition protecting privacy interests, and that should be where we start. Definitions of trap and trace devices and pen registers should also be reflected in the Nevada law and concomitant with those provisions in the federal law. We should be codifying the prohibition on getting content from these devices. Those provisions that start with privacy interests are what the Nevada Attorneys for Criminal Justice (NACJ) would like to see. For now, we testify in opposition.

KENDRA BERTSCHY (Washoe County Public Defender's Office):
We have some concerns, but we agree with modernizing the process to obtain these warrants and are concerned with ensuring the protection of the privacy and trust of our citizens. Our goal is to ensure that our Nevada statutes are in line with the federal law.

EMILY DRISCOLL (National Lawyers Guild):
I am a student at the William H. Boyd School of Law at the University of Nevada, Las Vegas. I oppose S.B. 41 because privacy interests are important.

CHAIR SCHEIBLE:
I will close the hearing on S.B. 41 and open the hearing on S.B. 50.

SENATE BILL 50: Revises provisions relating to warrants. (BDR 14-405)

AARON FORD (ATTORNEY GENERAL):
Many have heard me discuss the issues that my office is focused on, including criminal justice reform and constitutional rights. These are what bring me here today, focusing on the Fourth Amendment and its warrant requirements. I have provided the full written text of my testimony (Exhibit B).

A no-knock entry is when police try to capitalize on the element of surprise by securing the premises before the subject has the opportunity to respond. The USSC has upheld the use of no-knock warrants, but the constitutionality of a practice is merely the threshold question we must analyze. We know that in certain circumstances, no-knock warrants can be problematic.

Law enforcement agencies in Nevada significantly limit the use of no-knock warrants except in the most urgent circumstances. However, the restraint we have seen exercised here is the result of internal policy, not law. Senate Bill 50 seeks to enshrine these good policies into law by providing that no-knock warrants can only be issued in limited circumstances. This is not a call for complete prohibition on the use of no-knock warrants. In my judgment, there are rare examples when a no-knock warrant may be justified and needed to protect life if planned and executed appropriately. The solution we are presenting today sets up a framework that ensures no-knock warrants are utilized as sparingly as possible, with the equally important imperatives of officer and public safety.

For the purpose of this hearing, we have filed a proposed amendment (Exhibit C) that should not be considered final at this time. Our intent is to convene a meeting with stakeholders in the immediate future so we can hash out the remaining provisions of the bill. It would be useful to address the proposed amendment rather than the bill as introduced, because the bill is not the operative document from which additional negotiations will occur. I will address amendments to section 1 subsections.

Subsection 1 gives a magistrate the ability to issue a summons instead of a warrant regardless of whether the prosecutor made such a request.

Subsection 2 explicitly states the two factors that must be considered before a no-knock warrant should issue—public safety and officer safety. A no-knock warrant should not be utilized for misdemeanor, property or simple drug possession crimes. Law enforcement agencies seeking a no-knock warrant

should first prove a significant and immediate threat to public safety justifies the use of the no-knock warrant.

Subsection 3 lays forth six elements that an application for a no-knock warrant should contain. These are fully explained in Exhibit C and include a description of probable cause: why a knock-and-announce warrant will not work; effective hours of execution, daylight or otherwise; and what evidence indicates a no-knock warrant is necessary; certification of the necessity of a no-knock warrant; and certification that the officers effecting a no-knock warrant are properly trained to do so.

Subsection 4 describes a few criteria of how a no-knock warrant should be executed. This includes officers identifying themselves as quickly as possible, using the least force necessary to effectuate dynamic entry, wearing body cams whenever practicable and making a last-minute assessment to determine whether the need for a no-knock warrant is still present.

Subsection 5 provides a rebuttable presumption that if subsections 2 and 3 are not satisfied, a defendant may seek to suppress any evidence found as a result of any warrant that stems from that defective application.

The last sections of the amendments are conforming changes, consistent with the issues addressed above.

SENATOR HANSEN:
Is this a friendly amendment? I do not see the origin. Did it come from somebody in law enforcement? What is the background of the amendment?

ATTORNEY GENERAL FORD:
I have not categorized the amendment as either friendly or unfriendly. We are in negotiations with all interested parties. The amendment was presented to us by one side of the issue, predominantly the American Civil Liberties Union of Nevada (ACLUN), NACJ and public defenders among others. They raised good points that are valid for purposes of this discussion. We did not have the opportunity to have a thorough discussion with my colleagues in law enforcement and district attorneys' offices. Therefore, this is not friendly or unfriendly, but we do see it as an opportunity to continue discussions about presenting a bill that the Chair will bring to a work session.

SENATOR OHRENSCHALL:
You mentioned exempting misdemeanor allegations and felonies. I hope that as negotiations continue maybe nonviolent felonies can be considered for exemption as well because Nevada statutes have many nonviolent felonies.

SENATOR CANNIZZARO:
Regarding the requirement for the officers to certify that they are trained in practical or dynamic entry operations: How would you foresee what would qualify, and how would it operate? Would it be part of the application? Would there be a process for officers to apply for that, and how would you foresee that?

ATTORNEY GENERAL FORD:
Here is what I can tell you from anecdotal experiences. When I took a tour with the Elko police, I was in a car with an individual who was trained in dynamic entry and who talked about the need for having such tactical training in circumstances like this. My understanding is that departments are readily available and capable of ensuring that people who are executing these warrants have that training. The certification component is going to be a requirement in law to be sure that those who are applying for this form of warrant are in fact trained and certified.

WILLIAM H. SCOTT, JR. (Chief Investigator, Office of the Attorney General):
It is important these officers have the adequate training to affect such a warrant. A number of squads or sections within a law enforcement agency are not properly trained at the level of SWAT officers who are trained as part of their normal daily routine. It is problematic when individuals are neither trained together on a daily basis nor in sync with each other as they conduct this type of entry. It poses more of a threat to the officers and to the community if they are not properly trained. Adding a component into the bill where officers have to articulate the type of training they have received is important.

MS. ADAIR:
We do not anticipate requiring anything beyond a certification to the court from the officer. In the affidavit that supports the application for the warrant, the officer should add additional detail that would be helpful to the magistrate in making an educated decision about the appropriateness of the warrant. This amendment requires a certification from the officer that he or she is trained to execute the warrant.

ATTORNEY GENERAL FORD:
Chief Investigator Scott Williams, upon being hired, ceased all internal practices of dynamic entry until our personnel were trained.

SENATOR CANNIZZARO:
I want to talk about the rebuttable presumption. I understand the issue and we do not want the evidence to be obtained illegally or in violation of a Fourth Amendment right and then submitted to a court. The law provides that when things are obtained in violation of constitutional rights, they are excluded. A rebuttable presumption exists if a Fourth Amendment violation is proven, which is stated in the amendment but not the text of the bill. The way I read the amendment, violation of a constitutional right must be proved and then there is still additional inquiry as to whether or not the presumption is rebutted. That seems duplicative of current Fourth Amendment search and seizure laws.

This could be confusing when it is a rebuttable presumption, but then you prove the constitutional values. Can you talk a little about how that would work in the interplay with what we would traditionally see in a motion to exclude evidence under the Fourth Amendment?

ATTORNEY GENERAL FORD:
This bill intends to protect the constitutional rights of those who are subjected to the no-knock warrant via this rebuttal presumption, the intricacies of which are still being worked out.

KYLE GEORGE (First Assistant Attorney General, Office of the Attorney General):
As written the amendment says that the procedures in subsections 2 and 3 must take place. An affidavit and application must contain certain materials. The warrant must be executed in a certain way. Subsection 5 provides that if the defendant arrested pursuant to this bill believes there was a defect in the process at any point, he or she can challenge based on that defect. A prosecuting attorney has the opportunity to say that it is a procedural defect, not a substantive constitutional defect, which will overcome that challenge. That is as it should be. The USSC has opined on many occasions that some procedural defects do not amount to constitutional concerns but others do. This will be a case-by-case inquiry that can be made by any defendant and overcome by any prosecutor.

SENATOR CANNIZZARO:
This seems duplicative of what we typically see in Fourth Amendment litigation or law in terms of certain procedural defects that rise to that constitutional level and would result in exclusion. This is what we are articulating here, and I want some clarity. Are we doing something different from what we do in Fourth Amendment litigation when we are talking about excluding evidence?

MR. GEORGE:
The bill is consistent with existing Fourth Amendment practices, not duplicative. The intent is not to create a whole new standard.

SENATOR PICKARD:
It sounds like we may be conflating the amendment to apply to all entries and not just no-knocks. Does the amendment apply to any high-risk entry of any type, or is it just the no-knock? If a warrant is being served on a drug trafficker or where we have the ability to apply no-knock, does that still apply?

ATTORNEY GENERAL FORD:
This only applies to no-knock entries. If the amendment does not clearly show that, we will ensure it will be clarified.

SENATOR PICKARD:
I want to make sure that before we get to a work session you will circulate the final draft of the amendment language so we are not having debates at the work session about alternate versions but will have something solid to vote on.

ATTORNEY GENERAL FORD:
I will absolutely commit to follow whatever the Chair's rules and requirements are for a work session. If that is submitting a document well in advance of the work session, we will do so. We are always happy to hear from you directly and engage in discussions about this issue.

CHAIR SCHEIBLE:
Relating to language used twice in the amendment, I am looking at page 4 toward the middle. Section 2, subsection 1 starts with "a magistrate shall not issue a no-knock warrant" and goes on to express two standards: first, the underlying crime must involve a significant and imminent threat to public safety; and the second involves an imminent danger to the life of officers. Is this language on which you are still working?

MR. GEORGE:
There are two different aspects. The first part is demonstrating the underlying crime involved a significant and imminent threat to public safety. Senator Ohrenschall raised a concern that this not be used for felony crimes that may not be serious. We intend to keep this limited in scope to substantive crimes that implicate a significant imminent threat to public safety only. An example would be a large possession of drugs, which would be a high-level felony crime, but there may be no indication or evidence through the investigation of a safety issue going into it with a regular knock-and-announce entry. So the first part of that section is intended to be limited to only the most serious type of crimes.

The second part addresses if the agency can demonstrate that serving the warrant places a risk on officers or perhaps another member of the public. Those are the two elements we want to focus on and constrain the use of no-knock warrants. Nothing in this bill prohibits the use of regular knock and-announce warrants when it is more appropriate. If an agency is not able to meet the standards put forth in this bill, it can still resort to a traditional knock-and-announce warrant.

CHAIR SCHEIBLE:
I am thinking primarily of domestic violence. If somebody is threatening the safety of his or her partner and nobody else, would that be considered a risk to public safety? Or is it a threat to public safety to endanger a crowd of people by driving recklessly on the freeway and putting multiple people in danger at the same time? Can public safety apply to just one person? If we suggest the answer to this question is yes and go to the next problem, who would be threatened by giving notice? The standard is high to say that it has to create imminent danger to the life of the officer or another person. If an officer is not sure whether the subject who is barricaded inside a house is armed, then I do not know how to articulate that the officer's life is in danger or simply that his or her safety is in danger. I worry about how we address all of those specific questions when the first case comes up if this language is ultimately adopted.

ATTORNEY GENERAL FORD:
We will continue working with the interest groups, especially those that presented the amendment, as we work through those type of circumstances.

CHRIS WANG:
I decided to support S.B. 50; the amendment is the first step in the right direction. If no-knock warrants are allowed to continue, more lives of innocent citizens will be in danger. Since officers are entering a citizen's home without prior notice, the intrusions are often mistaken as burglaries or home invasions. Nevada is a stand-your-ground state and adheres to the castle doctrine which explicitly states under NRS 200.120 that citizens may use deadly force against intruders even if they do not believe their lives to be in danger. No-knock warrants, as they exist now, not only endanger the lives of ordinary citizens but also the lives of law enforcement. Moreover, the Breonna Taylor case is not the only case where no-knock warrants resulted in the violation of Americans' civil rights. To name a few other cases, a 19-month old child was badly burned by a flash bang or stun grenade during the execution of a no-knock warrant in Cornelia, Georgia, in July 2014. In another case in Killeen, Texas, a man shot and killed a police detective outside his home during execution of a no-knock warrant in May 2014. Two former Los Angeles police officers pleaded guilty to running a robbery ring from 1999 through 2001 by using fake no-knock warrants as a ruse to catch victims off guard. Currently, three states already ban no-knock warrants.

HOLLY WELBORN (President, American Civil Liberties Union Nevada):
The ALCUN, NACJ and public defenders presented an amendment to the Attorney General's Office and accepted some changes to that amendment. We understand that the Attorney General's Office is still in contact with other stakeholders on this piece of legislation. Often, lawmakers who present bills meant to protect families who are killed by police violence or have loved ones who were killed by police violence are the last people consulted. We appreciate the Attorney General's Office making communities a priority. This allows us to talk with people who we communicate with on a daily basis that we are not looking at a complete ban on no-knock warrants in the State of Nevada but a significant limitation that we are in a position to support at this time. I did submit some written testimony (Exhibit D) for you to consider delineating some of the technicalities of why we support this amendment. It is important to talk about what happened to Breonna Taylor.

MR.PIRO:
The Clark County Public Defender's Office supports the amended version and is happy to continue talking to make this the best bill possible because reducing

no-knock warrants like other jurisdictions have done protects public safety, protects officers and changes community trust in our police.

DENISE BOLANOS (Return Strong):
I encourage support of the amendment on S.B. 50 in my statement (Exhibit E) as no-knock warrants most often end in tragedy as we have seen time and time again. I picture myself alone in my home with my children in the middle of the night and my door is being broken down. It does not matter whether it is a burglar or the police with the wrong address. I will not immediately know that difference. What I do know is that I am going to react the same way regardless of the result to protect my children and myself, and that reaction will be instinctual and confrontational. Sadly, it will probably get me killed. There are other ways for law enforcement to achieve the results they are looking for. However, once a life has been taken, whether it is a civilian or a member of law enforcement, there is no way around that and there is no coming back. Will you support the amendment of S.B. 50 and save lives?

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):
At Progressive Leadership Alliance of Nevada, we work to structurally transform Nevada's criminal justice system by organizing people who have direct experience with mass incarceration and their families. The use of no-knock warrants began in the 1980s as part of the failed war on drug police militarization. Countless stories like Breonna Taylor's, who was unjustly murdered as a result of an unnecessary no-knock warrant and systemic racism, exist across the Nation. Senate Bill 50 would create a high threshold for law enforcement to justify why a no-knock warrant is necessary and require that a court not issue a no-knock warrant unless there is probable cause. Our Support Statement (Exhibit F) urges that you vote in favor of the amended bill.

SEQUILA ANGKRATOK (Diverse Social Action Group):
I am a student at the University of Nevada, Reno (UNR), a veteran of the United States Navy and a woman of color. Today, I represent the Diverse Social Action Group which consists primarily of social work students on the UNR campus. We are concerned about the death of Breonna Taylor and, through education, the negative impacts of dynamic and forced entry raids on both citizens and police. We have a particular concern about Black and Brown communities due to a history of disproportionate policing and police violence in our Country. We are excited to see such a relevant bill. When we read the initial bill language, we had some concerns about the protections for constituents. The provided

amendment is a much better representation of needed protections for all Nevada citizens, police and community members alike. We support the S.B. 50 amendment.

ERIC SPRATLEY (Executive Director, Nevada Sheriffs' and Chiefs' Association):
To clarify our organization's position, we are now neutral. We were in support of the original bill, but now with the amendment, additional discussion and clarification we will be having, we are neutral.

COURTNEY JONES:
The power given to law enforcement has continued to do more harm than good. And precautionary measures that this bill is touching are just the tip of the iceberg. No-knock warrants should be used in only the most dangerous situations; given how frequently and unsuccessfully they are used, we know that is not true. I am not sure if you have all heard of the cases of Henry McGee and Marvin Guy. One was in 2013, the other in 2014. They both shot and killed a police officer in defense of their own lives with no-knock warrants. McGee's capital murder charges were dropped, and Guy's capital murder charges stood. As you can guess, McGee was White and Guy was Black. They were both in front of a grand jury and when I looked at it, Guy's circumstances were more justifiable. I became aware of no-knock warrants in high school when I read the book *The New Jim Crow*. This book has been banned in prison, so that may be something you might take a look at too. It is interesting how we are trying to protect police today in this meeting and not really civilian lives. We have not talked about drug use in our Country, which should not really be illegal.

JOHN JONES (Clark City District Attorney's Office, Nevada District Attorneys Association):
We are neutral along with Mr. Spratley. We support the original version of the bill. We have some concerns with the proposed amendment and have pledged to continue working with the Attorney General, his Chief of Staff and First Assistant as we work through those issues. At this point, we are in the neutral position.

ANNEMARIE GRANT:
I speak on behalf of those who have had a loved one killed by police. My brother, Thomas Purdy, was asphyxiated to death at Washoe County jail. The altercation is shown in my supplemental information (Exhibit G). People mentioned Breonna Taylor, but there are far more names of community

members who have died during no-knock warrant such as Johnny Bolt, James Reed and Duncan Lambs. No-knock warrants are only to be used in the most dangerous situations. In reality, no-knock raids are a common tactic even in less-than-dangerous circumstances. There are a staggering 20,000 or more estimated no-knock raids every year. By the numbers, it is clear that no-knock raids are far more dangerous to civilians than to police. What might be surprising is how infrequently police officers get killed when they burst into a suspected criminal's home unannounced. It is usually the community member who gets killed and whose family voices are stifled.

YESENIA MOYA:
I am in support of the amendment to S.B. 50.

DESIREE SMITH (Founder and President, More Than a Hashtag LV):
We focus on police terrorism and police reform here in our city. We also spread awareness of people who were murdered by the Las Vegas Metropolitan Police Department. We are completely against no-knock warrants as they stand, especially since the murder of Breonna Taylor in Louisville, Kentucky. In a perfect world, we wish we could ban them. We know in this so-called police reform there will be loopholes that protect law enforcement; reluctantly, we are in support of S.B. 50 with our statement (Exhibit H).

CHAIR SCHEIBLE:
I will now close the hearing on S.B. 50 and open the hearing on S.B. 62.

SENATE BILL 62: Revises provisions relating to the solicitation of contributions. (BDR 7-413)

MS. ADAIR:
Senate Bill 62 is intended to improve transparency of organizations that receive charitable contributions in Nevada and to give the State additional tools to fight charity fraud.

Charitable giving is one of the most important financial transactions in our society. United States donors in 2019 paid more than $449 billion with 69 percent of the funds coming directly from individuals, according to the National Philanthropic Trust. Charitable giving allows nonprofit organizations to serve important causes and those in need. Charitable giving also allows individuals to express their wishes, benevolence and religious values by

supporting causes close to their hearts. Unfortunately, there are those who seek to exploit the generosity of others for their own greed.

Charitable organizations register with the Internal Revenue Services (IRS) as a Title 26 USC section 501(c)(3) organization. They must submit lengthy verification and documentation to demonstrate that the organization is organized and operated exclusively for charitable, religious, educational, scientific, literary or other approved purposes; must not be organized or operated for the benefit of private interests; and no part of the net earnings may inure to the benefit of a private shareholder or individual.

Fraudulent organizations clearly cannot meet this threshold, so many turn to other kinds of entities that are easily formed and call themselves a charity. Common examples include political action committees (PACs) and limited liability companies. You are probably familiar with PACs. While most PACs serve a legitimate political purpose, there are those that use their more-relaxed registration and reporting requirements to masquerade as a charity, solicit contributions from well-meaning people and pocket those contributions for themselves.

Fraudulent charities often choose misleading names that sound like charities or even slightly modified versions of the name of an existing charity to seek the advantage of the public goodwill of legitimate organization. For example, the American Association of Police Officers, Inc.; Veteran Police Association, Inc.; Police Protective Fund, Inc. and Junior Police Academy all sound like legitimate charities. These groups claim to assist local police and run educational programs. In reality, all of these organizations are run by the same individual who was later charged for false statements in solicitations and misuse of funds.

Our office receives complaints regarding charity fraud, particularly after a disaster when people are vulnerable. Yet these same organizations can escape our jurisdiction and punishment. At the federal level, the IRS cannot revoke the tax-exempt status of an organization that never registered as a 501(c)(3) in the first place. Under NRS 598.1305, the Office of the Attorney General has jurisdiction under the Deceptive Trade Practices Act (DTPA) to prosecute charities making false claims in their solicitations. But this section only applies to organizations "who the Secretary of the Treasury has determined to be tax exempt pursuant to the provisions of section 501(c)(3) of the Internal Revenue Code." If an organization is not exempted by section 501(c)(3), the statute does

not apply. This is the problem we are trying to solve with this bill. Scam charities do not serve the public, dupe well-meaning people out of their money and put legitimate charities at a disadvantage.

Section 1 expands the definition of a charity to include any organization that is or purports to be established for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic or other activity relating to or supported by charity or for the benefit of law enforcement, firefighting or other public safety personnel, or in any manner employs a charitable appeal as a basis of solicitation or an appeal that suggests there is a charitable reason for the solicitation.

The purpose of this bill is to require all charities, not just those registered as 501(c)(3) with the IRS, to register with the Secretary of State. This information is available to the public as a business entity, searchable on the Secretary of State's SilverFlume website. Charities are also required to file an abbreviated annual financial report to the Secretary of State with basic information that would normally be included on a charity's Form 990 with the IRS.

Section 2 clarifies that a contribution does not include bona fide fees or membership dues. This is not intended to apply to clubs or hobby organizations. It also clarifies that a contribution does not have to be tax deductible. Donations to PACs are not tax deductible.

Sections 3 and 4 make conforming changes.

Section 5 makes conforming changes to what an organization is required to report to reflect the types of organizations that have expanded.

Sections 6 and 7 make conforming changes.

Section 8 expands the jurisdiction of the Secretary of State and the Attorney General to refer and prosecute violations of the DTPA for both statements when soliciting contributions to all charitable organizations, not just those that are registered as 501(c)(3) entities.

Section 9 makes conforming changes.

SENATOR PICKARD:
When you first mentioned the Secretary of State's Office, am I to understand that it is on board with taking this all on? Registration of the number of organizations will be sizeable, although the Office probably already takes some—but to the extent that we are loading them up with more work?

MS. ADAIR:
The process of the Secretary of State's Office for a charitable organization is a simple one-page registration statement. There is also an exemption statement to show that the organization does not have to register. In our conversations with the staff, they indicated it would be a slight change to their current procedure, and they would be able to make that change without a significant financial or labor-intensive impact to the Office.

SENATOR PICKARD:
Regarding the new definition of contribution in section 2, we are adding language that in my initial review suggests we are narrowing the definition of contribution to those that come in response to a solicitation. In other words, if someone solicits a contribution and then gets the contribution but he or she does not overtly solicit it, then anything provided to that organization would not be considered a contribution. Is that a correct interpretation?

MS. ADAIR:
That is a correct interpretation of the bill as drafted. Where we see contributions coming in as a result of a solicitation and a donation would be considered a solicitation. You raise a good point, and we could remove that from the bill to make that eminently clear.

SENATOR PICKARD:
I try to look beyond the intent of the bill and see where this thing could go. I can imagine saying, "I did not ask for the contribution. It just showed up on my doorstep, so that is not a contribution and I do not have to report it." There is the issue because many of these organizations are required to report to the Secretary of State.

SENATOR HANSEN:
Over the years, I have seen some horror stories about legitimate charities in which an investigative journalist would examine the charity's paperwork, and it would have 80 percent to 90 percent of the donated money being paid out in

salaries and things like that. Virtually none of the money would be going to what the charity was supposedly supporting. Is there some standard in State law or federal law that says at what point that is considered a violation of charitable practice laws?

MS. ADAIR:
If you are looking for an exact percentage of contributions that must go to the supported charity, we do not have that in State law. This is one of the horror stories we get in complaints our office receives and why it is so frustrating when those organizations escape our jurisdiction. However, even though there is not a threshold, we do have a few tools. For example, if a statement of "One hundred percent of your donation will go to feed people in need" is not true, we can use the DTPA to prosecute that false statement. Another important point is if those organizations are 501(c)(3), by definition none of those proceeds can inure to the benefit of the shareholders of the nonprofit organizations. That would be a violation of the 501(c)(3) requirement under the Internal Revenue Code, and they can have their tax-exempt status revoked. But the DTPA law is exactly what we are looking for to stop those who are profiting from the charitable solicitations, making promises they have no intention of keeping.

SENATOR SETTELMEYER:
The Secretary of State's Office can do this without a fiscal note. A lot of work has to be done to register these individuals. I want to make clear that this is about registering individuals who are holding themselves out as a nonprofit.

MS. ADAIR:
That is the purpose of this bill, and I will defer to the Secretary of State although we have mutual goals in our conversations.

SENATOR SETTELMEYER:
A charity holds itself out as a charity and clearly has to register with the Secretary of State when this bill passes, but what about donations from that charity? If a charity gives someone $50,000 to open up a satellite or do something else and uses that money, basically embezzling it, is there any requirement of the charity to then divulge when it gives more than $10,000 or something of that nature? I have heard of many instances where that has occurred, and it seems terrible because then people find out later and become

discouraged. Is there anything we could do to require them to disclose to whom the charities donate?

MS. ADAIR:
I want to clarify that this bill does not apply to any religious institutions. Churches are treated differently under State law. This bill does not change any of the reporting requirements. Currently, 501(c)(3) charities receive a reporting form from the Secretary of State, which they submit to the Internal Revenue Service. If they are not a 501(c)(3) organization, they must report revenue, total expenses, revenue less expenses, total assets, total liabilities and net assets or fund balances. This gives the Secretary of State's Office an idea of revenue versus expenses, consistent with the law. This also gives the Secretary of State's Office the ability to investigate any fraud it potentially sees and then refer to the Attorney General's Office. Additional conforming changes in the bill include requiring a principal place of business and an address for custodian of records. This gives the Secretary of State's Office more information to conduct an investigation if it thinks there is fraud. It does not include any detailed reporting of who receives money and how much. We are not seeking to expand the reporting with a requirement of financial disclosures.

KIM PERONDI (Deputy of Commercial Recordings, Office of the Secretary of State):
The Secretary of State Commercial Recording Division is the filing office for official records and is responsible for the processing and recording of organizational and mandatory documents of business entities, pursuant to the laws of the State of Nevada within Title 7 of NRS. Legislation was originally crafted in 2013, requiring Nevada nonprofits under NRS 82 to register with our Office before soliciting charitable contributions. In 2015, these requirements were placed under NRS 82A and expanded to include in-state and out-of-state organizations. Please note there are some exemptions within NRS 82A.110. The existing filing requirements in NRS 82A include the name of the organization, jurisdiction, places of business, purpose, officers, directors and executive personnel, and certain federal tax status and financial reports information. There is no fee to file these documents, and the documents are recorded in our database and available to the public at no charge.

Senate Bill 62 was brought to our attention by the Attorney General's Office in its draft stage for review and comment. The proposed changes to NRS 82A cause no deviations to our filing processes nor do we anticipate any fiscal

impact to our Office. The Secretary of State's Office does not get involved with policy such as the expanded definition of charitable organizations. Therefore, we are not aware of the effect it could have on them. It is possible the extended definition may cause an increase in the number of filings for our Office as well as the number of inquiries and investigations. However, at this time we do not anticipate that to be enormous or unmanageable. The Secretary of State's Office is neutral on this bill as shown in our statement (Exhibit I).

Remainder of page intentionally left blank; signature page to follow.

CHAIR SCHEIBLE:
This will end the hearing on S.B. 62. The meeting is adjourned at 2:59 p.m.

RESPECTFULLY SUBMITTED:

Sally Ramm,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Begins on Page**	**Witness / Entity**	**Description**
S.B. 50	A	1		Agenda
S.B. 50	B	1	Attorney General Aaron Ford	Introductory Remarks
S.B. 50	C	1	Attorney General Aaron Ford	Proposed Amendment
S.B. 50	D	1	Holly Welborn / American Civil Liberties Union of Nevada	Amendment Support Statement
S.B. 50	E	1	Denise Bolanos / Return Strong	Amendment Support Statement
S.B. 50	F	1	Christine Saunders / Progressive Leadership Alliance of Nevada	Amendment Support Statement
S.B. 50	G	1	Annemarie Grant	Supplemental Information
S.B. 50	H	1	Desiree Smith / More Than a Hashtag LV	Amendment Support Statement
S.B. 62	I	1	Kim Perondi / Office of the Secretary of State	Neutral Statement