

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
March 23, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:22 p.m. on Tuesday, March 23, 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

GUEST LEGISLATORS PRESENT:

Senator Marilyn Dondero Loop, Senatorial District No. 8

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Pam King, Committee Secretary

OTHERS PRESENT:

Zach Conine, State Treasurer
Erik Jimenez, Senior Deputy Treasurer
Tim Haughinberry, President, Gay and Lesbian Chamber of Commerce
Andre Wade, State Director, Silver State Equality
Christine Saunders, Progressive Leadership Alliance of Nevada
Alexis Motarex, Nevada Chapter Associated General Contractors
Alison Brasier, Nevada Justice Association
Robert Eglet
DaShun Jackson, Director, Children's Advocacy Alliance
Kathryn Robb, Executive Director, CHILD USAdvocacy

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Serena Evans, Nevada Coalition to End Domestic and Sexual Violence
Nick Vander Poel, Reno Sparks Chamber of Commerce
Misty Grimmer, Nevada Resort Association
Peter Krueger, Nevada Petroleum Marketers
Paul Enos, CEO, Nevada Trucking Association
John Jones, Clark County District Attorney's Office
Bryan Wachter, Retail Association of Nevada
Chris Wakefield, Doctoral Candidate, University of Nevada, Las Vegas
Andrew MacKay, Executive Director, Nevada Franchised Auto Dealers Association
Paul Moradkhan, Vegas Chamber
Cary Silverman, American Tort Reform Association
John Piro, Clark County Public Defender's Office
Nicholas Shepack, American Civil Liberties Union Nevada
Kendra Bertschy, Washoe County Public Defender's Office
Lisa Rasmussen, Nevada Attorneys for Criminal Justice
David Boehrer, Nevada Justice Association

CHAIR SCHEIBLE:

I will call this meeting to order of the Senate Judiciary Committee. The hearing on Senate Bill (S.B.) 237 is open, and Senator Dallas Harris is presenting.

SENATE BILL 237: Revises provisions relating to businesses. (BDR 7-548)

SENATOR DALLAS HARRIS (Senatorial District No. 11):

I represent Senate District 11 in the southwest part of Clark County.

I will give an overview of what the bill does, and then hand it off to Erik Jimenez and our State Treasurer, Zach Conine. Tim Haughinberry will speak about what this bill means for the LGBTQ business community in Nevada.

Section 6 of the bill is the crux. Section 6 includes a person who identifies as lesbian, gay, bisexual, pansexual, transgender, transsexual, queer, intersex, intergender or asexual or of any other nonheterosexual or noncisgender orientation or gender identity or expression in the definition of disadvantaged persons.

Taking that definition and acknowledging this group of folks are disadvantaged persons in Nevada, the language flows into the bill to make sure that disadvantaged business entities include these folks.

Section 1 of the bill adds LGBTQ-owned businesses to the list of those entitled to receive information through the State business portal regarding public and private programs to obtain financing for small businesses under State and federal laws and the process for obtaining certification as a disadvantaged business enterprise.

Section 2 requires the Office of Economic Development's small business enterprise program to include LGBTQ-owned businesses.

Section 3 makes clear that elimination of discrimination against disadvantaged business enterprises, including LGBTQ-owned businesses, is important to the future welfare of our State.

Section 4 includes LGBTQ-owned businesses in the requirement imposed upon the Department of Transportation to establish goals for the participation of disadvantaged business enterprises and local emerging small businesses in certain contracts.

Section 5 of the bill requires any subcommittee on market participation appointed by the Chair of the Cannabis Advisory Commission to review and make recommendations on matters relating to LGBTQ-owned businesses in the cannabis industry in this State.

We are expanding what it means to be a disadvantaged business in this State and attempting to acknowledge we need diversity in all industries as well as providing resources to minority-owned, veteran-owned and similar businesses that are disadvantaged.

ZACH CONINE (State Treasurer):

Throughout the past year, small businesses across Nevada's communities struggled. Business owners have been forced to make tough choices as they navigated trying to pay their bills and their employees in the midst of one of the worst economic downturns we have ever seen.

Through much-needed aid from the federal government and leadership of Governor Steve Sisolak and this Legislature, vital assistance programs such as the Pandemic Emergency Technical Support (PETS) Grant Program have ensured that disadvantaged businesses have stayed open.

Senate Bill 237 is seeking to broaden the definition of the term "disadvantaged business" to be more inclusive of Nevada's LGBTQ community.

Making this change can ensure LGBTQ-owned businesses can access the same type of assistance and loan programs afforded to minority, women and veteran-owned businesses. As we work through Nevada's economic recovery, we need to make sure that all of Nevada's small businesses have the resources they need.

By elevating the voices of our LGBTQ business community, we can work collaboratively to create a State that is more inclusive and prosperous for all Nevadans.

Erik Jimenez has been instrumental in our pandemic response and recovery efforts.

ERIK JIMENEZ (Senior Deputy Treasurer):

This bill came to fruition as we were administering the PETS Grant. About midway through the process of getting through about \$30 million or \$40 million in approved applications, we realized we were using the definition of disadvantaged business to prioritize businesses that needed extra help during the pandemic, funding those applications first.

After talking with Senator Harris, we realized a deficiency in the law and there is no way for us to identify which of those businesses were from the LGBTQ community. A simple change and conforming language in the statutes where LGBTQ businesses are listed would ensure that whether we are providing information on assistance, grants and loans or if there is additional aid from the federal government that goes to support small businesses in our community, we can ensure those LGBTQ-owned businesses are included and get the help they need.

We need to make sure this population feels included, particularly members of the transgender community. It is important they are heard, seen and able to start a business and flourish just like everyone else.

TIM HAUGHINBERRY (President, Gay and Lesbian Chamber of Commerce):
Thank you for considering S.B. 237. It is extremely important to the gay and lesbian community.

We have had a rough year like most small businesses have had. Many of us, including real estate agents, have done well. However, people in convention service, the entertainment business, modeling, events and expos have been hit hard economically.

Although the Paycheck Protection Program helped, loans or programs like this are extremely beneficial.

Our organization has grown from 30 to 110 members in the last 2 years. Reno and Sparks have added 18 members in the last 3 months. The growth is important. This helps our companies survive, sustain and hopefully become successful.

SENATOR HANSEN:

Obviously, with women or veterans you can identify them pretty easily. A white male, like myself, could simply identify as bisexual or asexual, and I would qualify under this classification. Where is the standard of proof to show that a person is bisexual, heterosexual, homosexual or gender identity? How do you prove that?

MR. HAUGHINBERRY:

It is for certified companies. To become a certified LGBTQ business, you have to be certified by the National LGBT Chamber of Commerce. Chamber officials interview business owners independently to prove they are an LGBTQ-owned business in the State.

SENATOR HANSEN:

So there is actually a standard that is required before people can apply for this sort of a loan situation? If I am interviewed, how would you prove that I am not bisexual?

SENATOR HARRIS:

The truth is no one is out there masquerading as a disadvantaged person to gain some perceived advantage.

The issues you are raising, in practice, do not actually arise. Small business enterprise already has a certification for LGBTQ-owned businesses. The State already does this in certain areas. While I understand that you "do not wear your sexuality on your sleeve" so to speak, this is not an issue in practice. Generally, these types of arguments are only used to prove or suggest that LGBTQ-owned businesses or even LGBTQ persons do not need any additional protections.

I understand what you are saying. I know the State can deal with this, and it is not a legitimate concern.

SENATOR HANSEN:

Thank you for that information. However, I would point out at some point this can become significantly advantageous for business people to take advantage of.

An example is when Nevada started to encourage women-owned businesses to have priority in getting started. A tremendous number of businesses in Nevada shifted to female ownership to take advantage of these kinds of programs.

While it is true that currently this may not be the case, that does not mean down the road you will not have people essentially claiming to be members of a community that perhaps in their actual physical practices they are not.

I do not see how you can possibly come up with a standard to prove it, and I do not want to get into the details too much. This seems to go way too far, with way too broad of definitions for people to fit into the category.

CHAIR SCHEIBLE:

Do you care to respond, Senator Harris or other presenters?

SENATOR HARRIS:

I do not.

SENATOR PICKARD:

Senator Hansen's question raised a question I have. If the representation is that these have to be certified LGBTQ-owned businesses, I do not see that in the bill.

Can one of you point me to it in statute? It might be in one of the *Code of Federal Regulations* and I just do not know where it is. Can we get that on the record as to where that certification is required under this rule?

I read it to say, "a person who identifies as LGBTQ or has at least 51 percent." It seems to me that a mere representation that they identify would suffice. I want to make sure that is clear on the record.

SENATOR HARRIS:

Let us stick to statutory practice. The bill does not outline how women-owned businesses have to prove they are women, or how a veteran-owned business has to prove that they are a veteran. I am confident these issues can be shaken out in practice.

We have the Treasurer's Office present, as well. There are verification systems in place for all of these categories. I would imagine there would be some similar verification process, but that is not in the bill, nor is it for any other category, nor should it be.

SENATOR PICKARD:

I guess with those others there are regulations that set forth the standard. For example, veteran-owned businesses have to be able to demonstrate they are a veteran. We had to do that in the federal contracting work that I had done. I had to gather that information and submit it. Those verification systems are in place, and I do not see in the bill where that is required.

Does this create, set aside or have an expectation of a set-aside for this program?

SENATOR HARRIS:

I am not sure I understand your question. Are you talking about money, in particular, to implement the program? What do you mean by "set aside"?

SENATOR PICKARD:

No. In the application process, the licensing and the recognition of this as a new additional program or classification, my guess is this would be included in the government set-aside for construction projects where there are quotas or requirements for a certain level of minority business.

For example, on federal construction projects, there is a minimum requirement for a certain level of minority-owned businesses or women-owned businesses. I would assume this is now included in that set-aside for the now women-owned, veteran, or LGBTQ-owned businesses have to have a certain percentage of the subcontracted work. Is this program extending to those set-aside requirements?

SENATOR HARRIS:

It is my interpretation of the bill that the Nevada Department of Transportation (NDOT) would have to establish goals for the participation of these businesses. How NDOT decides to do that will remain to be seen as we have done for the program in the past.

I do not have anyone from NDOT here to walk you through how they would implement the bill. I am happy to get someone to circle back with you about that if you would like.

SENATOR PICKARD:

I think you just answered the question. The answer is yes. This is now one of those groups and would be treated the same as the others.

Regarding the Treasurer's involvement, that is about programs for grants and loans. Is that correct?

TREASURER CONINE:

The intention is to include that group within the disadvantaged business entities for which we prioritize the funding through the PETS Grant.

With the PETS Grant or other future grants, there are certainly no claims to set aside buckets for specific groups, we simply make sure we prioritize and take systemic, historical and current barriers to capital barriers to success.

ANDRE WADE (State Director, Silver State Equality):

Silver State Equality is a Statewide LGBTQ civil rights organization in Nevada. We are in full support of S.B. 237.

Disparities are across the board for the LGBTQ community, not just in assistance programs but also in business, as outlined earlier.

This bill has folks included in programs that already exist by creating equity. We are not creating a new class of people, and we are not creating a situation where this particular community is going to have an advantage. If anything, they are going to be slightly on equal footing with these efforts. Thank you for bringing this bill forward to bring inclusion for LGBTQ folks who are business owners in Nevada.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):

I want to echo the testimony of the previous speaker and urge your support for this important piece of legislation.

ALEXIS MOTAREX (Nevada Chapter Associated General Contractors):

We are in opposition of S.B. 237, primarily sections 3 and 4. While we appreciate and understand what the sponsors are trying to accomplish, we do have some concerns.

The Federal Highway Administration, which provides a significant amount of revenue for our Highway Fund, largely sets Disadvantaged Business Enterprises (DBE) participation goals in Nevada and does not recognize LGBTQ when setting those goals.

LGBTQ-owned business owners are currently eligible for the Small Business Enterprise Certification program which provides race and gender-neutral business goals on both State and federal projects. They do not have to be equal and currently have several of these contracts.

We share the concerns about what safeguards would be in place to prevent fraud. With no way to prove sexual identity, unscrupulous people could be incentivized to state they identify as LGBTQ to take advantage of the programs offered under these classifications.

We appreciate the intent of S.B. 237 and would love to work with the sponsors and other stakeholders on ways to accomplish their goals.

SENATOR HARRIS:

It is important that we continue to assess the state of our citizenry and what we can do to help businesses across the State coming out of the pandemic. I am sure this bill will make the world a little bit better, one little PETS Grant at a time.

CHAIR SCHEIBLE:

I will close the hearing on S.B. 237. I will now open the hearing on S.B. 203. Senator Dondero Loop will be presenting this bill.

SENATE BILL 203: Revises provisions relating to civil actions involving certain sexual offenses against minors. (BDR 2-577)

SENATOR MARILYN DONDERO LOOP (Senatorial District No. 8):

I am pleased to present S.B. 203 alongside Alison Brasier and Robert Eglet, two attorneys from Las Vegas.

The number of child victims of sexual abuse is unknown because so many do not report their abuse. In addition, many adult survivors of child sexual abuse never disclose their abuse to anyone.

We remember the news stories of the USA Gymnastics team doctor who abused the children in his care for many years. At his trial, former gymnasts, many in their 30s, reported the abuse 20 years later and more after it had occurred.

According to the National Center for Victims of Crime, nearly every state has a basic suspension of the statute of limitation for civil actions while a person is a minor.

Many states have also adopted additional extensions specifically for cases involving sexual abuse of children. Extensions for filing civil actions for child sexual abuse have most often been based upon the discovery rule. By the time the victim discovers the sexual abuse or the relationship, the ordinary time limitation for reporting may have expired.

This delayed discovery may be due to emotional and psychological trauma often accompanied by repression of the memory of the abuse. Many states have extended their statutes of limitations for civil actions involving these cases. Some states have removed this limitation entirely.

In 2017, the statute of limitations was raised for these types of civil actions from 10 years to 20 years. Senate Bill 203 removes that limit altogether. This is critical in achieving justice for survivors in civil suits because it is a powerful tool for deterring the bad actors.

I will walk you through S.B. 203, highlighting the major provisions.

Section 1 changes the statute of limitations for filing a lawsuit to recover damages arising out of sexual abuse or exploitation committed against a minor, including injuries suffered by a victim of pornography involving minors.

This bill removes the existing 20-year limit and specifies the action may be started at any time after 18 years of age. Further, this section provides an exemption to identifying a specific incident that caused an alleged injury to the plaintiff. It also includes a definition of unwanted sexual contact.

Section 2 contains several changes to the law. First, it provides incidents of civil action involving persons other than the convicted abuser. The previous conviction of the person actually committing the offense constitutes evidence in the action with the person sexually abused or exploited with the plaintiff.

Secondly, the person other than a convicted abuser is liable for damages if that person had any employment relationship or responsibility for the abuser; if that individual owned the property where the abuse took place; if they knew or should have known the abuse or exploitation was taking place; or they allowed it to occur.

Section 2 provides additional damages for a person who is liable to the plaintiff other than the person convicted of the crime. If that person gained a benefit or covered up the abuse or exploitation, the person is liable for damages.

The next provision is contained in section 4. The section states changes made in S.B. 203 allow the liability for recovery of damages to apply retroactively to

incidents of sexual abuse, exploitation or any act involving pornography and a minor, even if the statute of limitations have expired under previous law.

Essentially, it restores the ability of a plaintiff to take civil action that was previously barred by a 20-year limit. This change in our statutes is long overdue. The survivors of sexual abuse and exploitation deserve a civil forum to pursue their abusers and those who allowed their abuse or exploitation. The treble damages in the bill are intended to be punitive as a deterrent to those who aid and abet, or turn a blind eye to the abuse or exploitation.

We do not have a statute of limitations for homicides. These crimes are a form of murder against minors, killing innocence and destroying the life of a child. Removing the statute of limitations for civil actions involving these crimes may provide survivors with some small measure of closure.

ALISON BRASIER (Nevada Justice Association):

The intent of this bill is to stop human trafficking, sexual abuse and exploitation of children in Nevada.

Before I go into details of the bill, I will provide statistics to show the scope of what is happening in Nevada.

According to the National Human Trafficking Hotline, which collects those reports of human trafficking and abuse, between 2007 and 2016, there were over 1,600 calls just in Nevada to report cases of human trafficking. Of those calls, in Las Vegas almost 500 cases were opened, and in Reno, 51 cases were opened. In 2017, Nevada ranked tenth in number of cases reported. However, if you break down the number of cases per 100,000 residents, Nevada, ranks second.

When you look at those Statewide numbers together, we were averaging a little more than one case opening per week. Those numbers are low because of underreporting of these crimes.

One victim of child sex trafficking is too much, but having one case per week opened on average during the span of nine years should be shocking and concerning to all of us. This is one of the problems this bill tries to address.

Section 2 of the bill expands the parties who may be held liable for this type of abuse against children. It allows victims to seek recourse not only against the abuser and perpetrator, but against the pimps and the businesses who allow this to occur.

The pimps, traffickers and other abusers are the primary source of this injury, but they do not work alone. They rely on businesses who turn a blind eye to this sort of behavior and criminal activity in their establishment. Hotels, motels, truck stops, nightclubs nor other seen bad actors in the community who turn a blind eye provide a location for this type of abuse to happen. Although there are criminal punishments available to the individuals, arresting one pimp, trafficker or one abuser at a time is not going to get to the heart of the problem.

Through this bill we need to financially punish the bad actors and these businesses who allow crimes against children to occur. By putting a financial connection to this type of behavior will incentivize businesses to train their employees to be the first line of defense against fighting this type of sex trafficking and exploitation of children. Many times they are in the best position to identify and stop this criminal activity from happening. This is not meant to open the floodgates to lawsuits.

Section 2 of the bill clearly spells out four factors that need to be met before a business or other individual can be held liable. A person or business can be liable if they employ, supervise or have the responsibility for the person convicted of a crime; own or control the property upon which the sexual abuse or exploitation occurred; know or should have known the sexual abuse or exploitation by the person convicted of the crime occurred; and allowed the sexual abuse or exploitation to occur. These four factors have to be met before a business or another individual can be opened up to civil liability.

The second intention of the bill is to give these child victims time to process what has happened to them and how to find the courage, strength and support from members of the community or family members to come forward and be brave enough to bring this lawsuit. Unfortunately, we are all too familiar with these highly publicized incidents that Senator Dondero Loop mentioned, such as the incidents at the USA Gymnastics or with Jerry Sandusky at Pennsylvania State University. It often takes victims of sexual abuse many years or decades before they feel comfortable and have the support to come forward.

There are a couple of reasons for this. These victims of human trafficking or sexual abuse are groomed by their traffickers or pimps and are fearful of reporting the crime or trying to escape. They have been isolated from their family members or friends so they have no support if they do try to escape or report the crime. They are oftentimes convinced by their pimps, traffickers or abusers that they deserved it. A lot of these young victims become loyal to those abusers. They rely on them for their basic survival.

When it comes to a timeline for reporting, every victim—if they find the strength and bravery—will come to a different point in time. This type of abuse and trafficking have lifelong effects on these children. It could take years for them to be lucky enough to find the courage and support to come forward.

Section 1 of the bill removes the statute of limitations for these types of civil claims to give victims time to seek the justice they deserve. This bill will protect children in Nevada. It targets not only pimps and abusers but the businesses who turn a blind eye to this criminal activity, sexual abuse and exploitation of our children.

We urge your support for S.B. 203.

ROBERT EGLET:

I do not have much to add. I think Senator Dondero Loop and Ms. Brasier did an excellent job of bringing out facts about the bill. I will echo the fact that when this happens to children at a young age, it affects them dramatically throughout their lives.

Studies show that victimization of children cause them to fail in school, in work and in life. Many of them become drug abusers and have problems throughout their lives.

About one third of the victims never come forward during their entire lives. The average time when victims who have had this type of experience as children actually report the crime is not until they are 52 years old. They are either not able to come forward, do not have the strength to do it or repress memories.

Ms. Brasier mentioned hotels. I have not seen—and we have researched this a great deal—and do not believe there is a problem on any of the Strip properties in Las Vegas. I am not saying there may not be some prostitution that goes on

in some of the rooms there; that is not the issue. We are talking about child trafficking, and I have not seen any problems on Las Vegas Strip properties.

Where it is a problem are lower-level, off-Strip properties where the managers are in on it, getting kickbacks or turning a blind eye to allow pimps to run children through these places of business, truck stops and other businesses like this.

Nevada has one of the worst problems in the Nation. This is a nationwide problem, but Nevada is at the top of some of the problems across the Country. We need a way to fight this problem more than just the criminal justice system.

These bills are being presented or have been passed in a number of other states across the Country to try to combat human trafficking—presenting a huge deterrent to these businesses from stopping that activity and making sure that it does not occur on their premises in the future. That is the purpose of this bill.

SENATOR OHRENSCHALL:

If the proposed changes become law, do you see victims who have been trafficked decades ago, possibly involving a truck stop, other business or nightclubs that allowed this to happen, where a prosecutor might feel they do not have enough evidence for a criminal case but where a civil action could be successful? They could try to make the victim whole, but also try to make sure whoever let it happen will not let that occur again.

MR. EGLET:

Yes, I do think that is the case. The burden of proof for prosecutors is beyond a reasonable doubt, which is a much higher burden.

In this statute, there is both knowledge and constructive knowledge. Business owners knew or should have known that this activity was going on in their business. This provides an avenue in conjunction with the criminal justice system to try to deter and reduce this problem in our State.

SENATOR HANSEN:

Six terms we have talked about child sexual trafficking, from my very first session and every single session. I would love to have someone go back and review the laws we already have in place and see if they have been effective in any kind of reduction in these horrible crimes.

It seems we keep adding more laws. This law is unique. Senator Dondero Loop mentioned the 20-year time. It was 20 years on top of 18 years within a 20-year window. We did that as a compromise because in criminal law, there is supposed to be a presumption of innocence. Under civil law, it changes the bar substantially. I am glad that Mr. Eglet and Ms. Brasier mentioned that "businesses that turn a blind eye" are the real focus of this change.

Mr. Eglet mentioned that the Strip casinos are not guilty of this. I am going to make this presumption and straight up say the Strip casinos know about prostitution going on at their sites. I cannot say every one of them. I know enough people working in those casinos who make it clear they are not innocent when it comes to illegal prostitution in their units.

My biggest issue is that by changing the burden from a presumption of innocence under criminal law to prove beyond a reasonable doubt drops the bar substantially. Is this supposed to kick in after a criminal conviction, or can this apply to any time in a victim's lifetime?

MR. EGLET:

If the perpetrator of the act, the person who had sex with the underaged child is criminally convicted, that criminal conviction for purposes of this statute is conclusive proof that the sexual abuse occurred. In the civil action, the victim would have to establish all four conditions are conjunctive not disjunctive. In other words, "it is" and not "or." All four of these levels have to be met.

With respect to section 2, subsection 2, paragraph (d) stating "allowed the sexual abuse or exploitation to occur." Ms. Brasier and I had a constructive meeting with lobbyists from the Resort Hotel Association. They suggested some language that is constructive and appropriate. It makes that section state "that they failed to take steps to stop or abate the sexual abuse or exploitation after the person knew or should have known." This is described in section 2, subsection 2, paragraphs (a) through (c) in Senate Bill 203.

This is a constructive proposal. We also have suggestions with respect to the description of the type of people that would have to know. There was some discussion about senior management. Both sides are going to wordsmith that issue.

It is true this would be open for victims to bring this action. As I stated before, the average age of someone to come forward is 52 years old. While we appreciate that the Legislature did previously increase it to 20 years, it is still age 38. There will be a number of victims who cannot seek justice, and removing the statute completely adds to the deterrence value of the bill.

SENATOR HANSEN:

I want to do everything humanly possible to reduce this to zero and aggressively punish the people who are the perpetrators. Is it possible to have a class action lawsuit against a Strip casino or some other type of business that may have been involved in this type of activity, whether directly or indirectly?

MR. EGLET:

No. I do quite a bit of class action work so I am very familiar with that type of work. You have to have typicality, commonality and the damages have to be very similar. It has to arise out of the same event, same conduct, within a limited period of time.

I cannot imagine any court ever served by that type of case, a class action, under our current class action laws both in State and federal court. I do not see how that can be done. That is not any sort of a potential issue or problem. These cases would have to be brought on an individual basis to have any hope of success.

SENATOR PICKARD:

Being a member of the Nevada Justice Association (NJA), I align with the bill. I do have concerns. We have a detailed definition of sexual contact, and I was looking through some other statutory places, and this is a little bit different. It is broader than what we typically see in criminal law.

Is there any concern that because we have a different definition it might create some difficulties in the litigation process?

MR. EGLET:

Not as long as the definition is met under this statute. It does not have to be exactly the same as the criminal statutes. There are varying definitions or varying words used, it is defined in the statute by itself as to what the sexual abusers' sexual exploitation is.

SENATOR PICKARD:

My concern is that it might create a defense where if someone was convicted under a different standard, now we are applying that standard here, yet we claim it is conclusive evidence.

If we are going after these lower-level "stinky hotels," those that harbor and help these perpetrators, I am concerned that by the first factor of the four factors that have to be met, we might be excluding a number of them.

If they have to be employed, supervised or otherwise have some legal responsibility, that is going to exclude a lot of them who would simply convey "wink wink, nod nod, go ahead and do your thing and give me your kickback." There is no responsibility there. Are we defining in this statute the responsibility to include that "wink wink, nod nod" and facilitating of the behavior? Is that going to be the standard for responsibility here? I do not see it defined in the bill.

My guess is that it would take the ordinary meaning which would mean that the businesses have to have some legal responsibility over the individual, thus excluding most of these places. How do we reconcile that?

MR. EGLET:

The legal responsibility or employment under the statute is for the person working in the motel or managing the truck stop who knows about what is going on and knows pimps are running these children through the truck stops and parking lots and putting them in the cabs of trucks of these truck drivers.

They know what is occurring. Some of them get kickbacks from the pimps, some of them are getting more business from the truckers knowing about this, and perpetrators going to this particular truck stop—and the same with these motels. The manager or the owner of the motel is getting more business because the rooms are being rented.

It is not that the pimp is employed by them. It is the manager or employee in charge that knew about this crime and either turned a blind eye or is getting some benefit from it.

SENATOR PICKARD:

You just hit on the point. If we are talking about the employees and how many times the employee is merely turning the blind eye, how many times are they convicted of the crime?

MR. EGLET:

They are not normally convicted of a crime. I am not sure if there is a criminal statute for that. That is why this bill is important to significantly deter this type of conduct. The owners and managers of these businesses will be subject to civil liability if they continue in this type of conduct.

I am not a criminal lawyer, but to my knowledge, I do not think there is a criminal statute where a prosecutor can go after that manager or that employee.

SENATOR PICKARD:

You have confirmed that because of factor a in section 2, and because we are not convicting the coconspirator, we could not apply this to any of those "stinky hotels," let alone the resorts that—and we have heard many times over the sessions I have been here—supposedly know this is going on in their facilities.

The way S.B. 203 is written, in section 2, subsection 4, paragraph (a), referring to *Nevada Revised Statutes* (NRS) 41B.070, I do not see how this applies. We do not convict them because that is one of the necessary factors.

MR. EGLET:

No. The criminal conviction is of the john or the pimp. You do not have to have a criminal conviction of the manager or the owner of the business. As long as they had knowledge or constructive knowledge of this, you do not have to convict them for them to be liable.

SENATOR PICKARD:

I am reading the language in section 2, subsection 2, paragraph (a) that says "a person is liable to a plaintiff for damages if the person employed, supervised or had responsibility for the person convicted of the crime." So as I read that, you have to be an employee, a supervisee or someone under the responsibility. The person having responsibility over the person is convicted. If you are convicted, that person either has to be an employee or supervise under the responsibility of the owner.

And what you are describing is not how I read it. Maybe this is a question for counsel to get on the record in support. This is confusing to me, and I am law trained. I can only imagine what this will do. I think we need to look at that language.

CHAIR SCHEIBLE:

This law applies simply to civil actions and those civil actions taking place in a completely separate lane. They are a different proceeding than the criminal action. Is that a fair characterization?

MR. EGLET:

That is a fair characterization. You are correct. Going back to what Senator Pickard was saying. He is looking at section 2, subsection 1, which reads,

If a plaintiff is the victim of sexual abuse or exploitation, a person has been convicted of a crime arising out of such sexual abuse or exploitation of the plaintiff and the plaintiff commences a civil action against a person other than the person convicted of the crime, then the judgment of conviction of the person convicted of the crime is conclusive evidence in the civil action that the person convicted of the crime sexually abused or exploited the plaintiff.

Section 2, subsection 2 of S.B. 203 states "a person is liable to a plaintiff for damages if the person" The person we are talking about in the bill is not the person convicted of the crime, it is the other person.

CHAIR SCHEIBLE:

Because we have these two separate lanes, a civil case and the criminal case, the bill does reference the outcome of a criminal case. Is it fair to say that it is because they arise out of the same facts?

MR. EGLET:

Yes.

CHAIR SCHEIBLE:

There is some benefit to us as lawmakers to think practically when both of these cases come before two completely different courts and completely different judges, they will be operating from some of the same evidence.

For example, the same statements, same videos, emails and text messages might be shown in one case as in the other to show that sex trafficking had occurred. Is that the reason for incorporating parts of the criminal statute, or acknowledging the criminal aspect of the statute in S.B. 203?

MS. BRASIER:

Yes. I think that is a fair characterization of what we are intending to do. Gathering of evidence, especially in a police investigation, is going to give meaning in the civil case.

The way the bill is written, you do not have to have the criminal conviction to then pursue the civil case, but if there is a criminal piece that would promote conviction, that evidence in that conviction can come in for the civil case.

CHAIR SCHEIBLE:

That would prevent the court from having to do a trial within a trial to show sex trafficking, abuse, rape or any other kind of sexual contact occurred when it has already been proven beyond a reasonable doubt?

This would alleviate the necessity to do a trial within a trial on those facts because it has already been proven beyond a reasonable doubt in criminal court. Is that a fair assumption?

MR. EGLET:

Partly true. The criminal conviction of the john or the pimp is conclusive evidence, but in the civil case, the victim would still have to prove all four of the elements set forth in section 2, subsection 2 of the statute—the a, b, c, d factors. That evidence either includes actual or constructive knowledge and that person was employed, supervised or had responsibility to the person convicted of the crime. All of those things. There may be some wordsmithing we have to do to fix this.

CHAIR SCHEIBLE:

I am not sure if there is. I just want a clear record. For example, I am a person who has been sex trafficked, and I want to bring a suit against the owner of the motel where I was trafficked. You are saying there are two ways to go about it.

If there has never been a criminal case, I would have to prove that I was trafficked there, meeting the four paragraphs in section 2, subsection 2 to prove

that the motel owner had responsibility for that person, owned or controlled the property, knew or should have known and allowed the abuse to continue.

That is one route. The other route is if that person was already convicted, whether it was last year, last month or 15 years ago, I can bring in the judgment of conviction and say, look, I was a victim of sex trafficking, and now I have gotten past that first hurdle. Let me show you how I meet the second set of hurdles of where this crime occurred, was at the motel and the owner was responsible for the person who controlled the property knew, should have known and allowed it to continue.

MR. EGLET:
That is accurate.

CHAIR SCHEIBLE:
This is similar to a law school hypothetical because you are both experienced civil attorneys and have worked on many civil cases, which I have not, but I am trying to imagine another scenario in which someone is responsible for a venue, a place, and responsible for the people inside who may not be employees or supervised.

Hypothetically—I am going to try to draw a parallel between—I am an owner of a gym, and there is someone at that gym who is sexually harassing the women who go to the gym. Could the gym owner be held liable for allowing that harassment to continue?

MR. EGLET:
This bill does not address sexual harassment. This is sexual abuse or exploitation, which is defined clearly in the bill. I am not a labor or employment lawyer. Whether the gym owner would have liability if one of his customers was sexually harassing another customer is a different issue than sexual abuse or exploitation.

CHAIR SCHEIBLE:
Ms. Brasier, what do you think?

MS. BRASIER:

I agree with what Mr. Eglet said. To help make the hypothetical more apt to this situation would be if there was a gym owner and in your case, a customer, who was abusing children at the gym repeatedly.

You would need to look at section 2, subsection 2 to understand what did the owner know or should have known? What did the owner do in response to that knowledge or that activity?

The four factors are analyzed to make business owners or other individuals responsible for criminal activity of another are so that it is not a free-for-all. You have to prove all four of these things and that the business owner or individual turned a blind eye allowing this abuse or exploitation to continue to happen.

CHAIR SCHEIBLE:

I am most concerned about section 2, subsection 2, subparagraph (a) where the person, the defendant in the civil case, has to have either employed, supervised or had responsibility for the person convicted of the crime.

I interpret that broadly to mean that a property owner has responsibility for their customers, their patrons and the people who frequent the establishment. I want to make sure that understanding is correct because if it is not, then we would be missing some of the people this bill is intended to include.

MR. EGLET:

Senator Pickard has a point about subparagraph (a). I think it needs to be wordsmithed. I do not have the words in front of me, but it should not be employed, supervised or had responsibility for the person convicted of the crime.

It should be employed, supervised or had responsibility for the person who knew or should have known that the activity was going on at the premises and failed to take any steps to abate or stop it, turned a blind eye or was getting a kickback. Unfortunately, language in the bill is not really how it was intended.

This bill is directed only toward minors or who were minors at the time of the sexual abuse or exploitation, not adults, where this is going on in these facilities.

I understand what Senator Hansen said about Strip hotels may know that prostitution is going on. I am not convinced, and have seen a lot of evidence, that child prostitution is going on at those properties. That is the difference.

DASHUN JACKSON (Director, Children's Advocacy Alliance):

We support Senate Bill 203. We believe this bill is extremely important to the victims of sexual offenses. Children who have been sexually abused experience trauma and fear that prevent them from speaking up. This bill would allow these innocent victims the opportunity to heal and get the justice they deserve.

KATHRYN ROBB (Executive Director, CHILD USAAdvocacy):

I am a mother and a survivor of childhood sexual abuse. At CHILD USAAdvocacy, we work on child protection legislation all over the Country.

A national trend by lawmakers is responding to the epidemic of child sexual abuse. Data and research state that 1 in 5 girls, and 1 in 13 boys will be sexually assaulted before their eighteenth birthday. That is 13 percent of all children.

Since 2002, 37 states and the federal government have extended their sexual limitations. Twenty-one jurisdictions have revised their civil statutes of limitations, and 13 jurisdictions have eliminated their statutes of limitations for child sexual abuse.

This year, 30 states have already introduced statutes of limitation reform and 17 of those were revival legislation. The national trend is clear as to this epidemic of child sexual abuse.

The sky has not fallen. Others will cry the courts will be flooded. The courts have not been flooded. Others will cry and say we do not do this for other courts. These are not car crashes. We are talking about assault and rape of children. These are very different civil laws that silence the victims. Think of the repeated intentional car crashes that damage and traumatize children for their entire lives. Others will also cry that institutions and organizations will go bankrupt. Bankruptcies are chapter 11, and they are voluntary. They serve the wrongdoer.

Victims become a number on a spreadsheet, their voices lost, wronged by others who keep secrets since there is no discovery. Meanwhile victims, society and taxpayers bear the financial burden of the cost of child sexual abuse.

SERENA EVANS (Nevada Coalition to End Domestic and Sexual Violence):

We are here in support of S.B. 203. There is no statute of limitations for the pain and trauma that victim survivors of sexual abuse or exploitation feel. It makes sense to ensure there is no statute of limitations for which these victim survivors can seek restitution to recover damages caused by their victimization.

We favor adding the definition of sexual contact to include other sexual acts like unwanted and inappropriate touching. We know that all victim survivors' experiences of sexual violence are different. It is important to recognize the different experiences of each survivor in our statute.

NICK VANDER POEL (Reno Sparks Chamber of Commerce):

We oppose Senate Bill 203. While the Reno Sparks Chamber of Commerce is against sexual abuse and exploitation, we have concerns we need addressed and will work offline with the bill sponsor and the parties involved to shore up our concerns.

MISTY GRIMMER (Nevada Resort Association):

We appreciate the gravity of this bill and the goal of holding accountable the people responsible for these crimes and the people who could have stopped these crimes if they were in the position to do so.

As it is currently drafted, we are in opposition to S.B. 203. We have started conversations with Ms. Brasier and Mr. Eglet. As Mr. Eglet mentioned, we had a constructive discussion and look forward to continuing those conversations.

The crimes described in this bill are horrible crimes. It is important to hold the responsible parties to task. Since these crimes are so horrible, it is also important that people who were not a party to these terrible acts are not unintentionally pulled in as having been so.

That is the balance we are seeking in our discussions with the sponsor and the proponents. We look forward to continuing those discussions.

PETER KRUEGER (Nevada Petroleum Marketers):

During today's testimony, truck stops and other fueling sellers have been singled out as hot beds for youth trafficking, and we do not dispute that.

More than ten years ago, I joined with the Truckers Against Trafficking and other groups to do things which I hope would qualify as not turning a blind eye. Part of Truckers Against Trafficking programs include posting signs with phone numbers to the national hotlines and other kinds of signage. We also use security patrols.

The average member of the public does not realize that a truck stop is anywhere from 10 to 20 acres in size. We are not sure and would like clarification that when an owner who could be a corporation many miles away—or the management of that daily facility employs some tactics that are going in the right direction—whether they would meet the legal challenge of turning a blind eye?

I am happy there are discussions. We would like to be part of the discussions because it is one thing to call bad actors out, but the majority of businesses and all of our members are trying to do the right thing in preventing this dastardly crime. We would like to give you the dialogue.

PAUL ENOS (CEO, Nevada Trucking Association):

We oppose S.B. 203, section 2, subsection 2, in terms of employed, supervised or have responsibility. We hire a lot of independent contractors and wonder if they would be covered under this. We have had some conversations with NJA and are hopeful that we can come up with language that works.

In 2012, Nevada Trucking Association became the third trucking association in the Country to partner with Truckers Against Trafficking. Since then, we have trained over a million truck drivers to recognize and report the signs of human trafficking. It is something that is important to us.

Unfortunately, because of the large number of visitors Nevada has and its transitory nature, we do end up with a hotbed for human trafficking. It is something that we, as an association and industry, absolutely are in the fight to end. Our truck stops are some of our best partners, and we appreciate continuing the conversation to see if we can make this a better bill and clear up some language in section 2.

JOHN JONES (Clark County District Attorney's Office):

We are in opposition to S.B. 203. We support the attempt of this bill in giving child victims of sexual abuse and exploitation the space and time they need to recover from the pain and trauma afflicted by their abuser and those who allowed the abuse to occur.

We have reached out to Senator Dondero Loop and the Nevada Justice Association with a few concerns, and we appreciate their willingness to work with us. We are requesting language and definitional cleanup and clarification that the governmental immunity and liability provisions located in NRS 41 apply. We support the intent behind the bill and are willing to continue working on a potential resolution.

BRYAN WACHTER (Retail Association of Nevada):

The Retail Association has been working on this bill. We supported legislation in the last Session, and we have also been supporting legislation in the other House that, hopefully, will make its way to you to combat this horrific problem. Clarification is needed in the language, as noted during the hearing. We will look for that new language.

This is a repugnant act. We do not support anyone who engages in it, and question how effective a deterrent civil liability will be to someone who is willing to engage in this most horrible of activities. Will this be enough to deter that behavior? We are interested in helping solve this problem and look forward to the continued discussion.

CHRIS WAKEFIELD (Doctoral Candidate, University of Nevada, Las Vegas):

I speak as a scholar who has been researching sex offense policy for five years. Senate Bill 203 looks like a bill that was viewed for public good by extending the ability of victims to pursue civil damages. In practice, S.B. 203 is based more on dramatic media stories than on the majority of sex offenses it will apply to, which have gone unaddressed by this Committee today. I have provided a more detailed testimony ([Exhibit B](#)) about this law, which I encourage the Committee to review.

As an example, Andy, a man in his 60s, would be a common target for this law. After Andy's conviction, he could not return to his previous job and ended up working a landscaping job for close to minimum wage for many years. Now

most of his income is Social Security, and he cannot work. He has lost his wife, his family, friends, home, career and the ability to engage with the community.

If S.B. 203 is passed, he will not have the funds to defend himself nor could he pay for damages if he were to. He will likely end up another sex offender on the street where we cannot track him. According to the Sex Offender Registry, 10 percent are already housing unstable or homeless—a number we cannot afford to increase.

If the members of this Committee have any investment in criminal justice reform that so many in our State took to the streets to fight for this year, realize we do not get there by creating unlimited liability that never allows an offender of any type to rebuild and reintegrate into society.

ANDREW MACKAY (Executive Director, Nevada Franchised Auto Dealers Association):

I am speaking in tepid opposition to S.B. 203 because we believe the intent of this bill is spot on. Our concerns with the bill are mainly in section 1, subsection 2. Some of the language in there needs to be massaged, as eluded to by Mr. Eglet. Those have been covered at length.

PAUL MORADKHAN (Vegas Chamber):

We do not have an issue with the intent of the bill or condone these types of activities. I reiterate the comments made by several of my colleagues that have concerns about clarifying some of the language discussed today.

CARY SILVERMAN (American Tort Reform Association):

I will read from my written testimony ([Exhibit C](#)).

CHAIR SCHEIBLE:

I want to let everybody who has been calling in to testify and everyone who is watching this meeting know that in the Senate, we do not have rules about testifying in opposition if you have a problem with one part of the bill or a concern about one part of the bill. We do leave it up to our individual testifiers or witnesses to determine where they best fit, whether a neutral or opposition position. Would the presenters like to respond with final testimony?

MR. EGLET:

I appreciate Senator Pickard's sharp legal eye on the problem with the one section, the vagueness of it. We will work on that and are willing to work with the group to address their concerns offline.

SENATOR DONDERO LOOP:

The survivors of sexual abuse and exploitation deserve a civil forum to pursue their abusers—those allowed to abuse and exploit them. There will be some amendments that are offered to this bill, and we thank all of those involved.

CHAIR SCHEIBLE:

I will now close the hearing on S.B. 203 and open the hearing on S.B. 223.

SENATE BILL 223: Revises provisions relating to jury selection. (BDR 1-714)

SENATOR DALLAS HARRIS (Senatorial District No. 11):

Senate Bill 223 codifies a defendant's right to be judged by a jury of one's peers. I have a proposed amendment ([Exhibit D](#)). During the process of jury selection, attorneys for both plaintiffs and defendants have a limited number of opportunities to strike potential jurors without providing a specific reason to preemptory challenges.

While the Supreme Court has ruled such challenges to exclude a juror based on their race or gender is unconstitutional, neither the Supreme Court nor federal law explicitly prohibit discrimination in jury service based on other characteristics such as sexual orientation or gender identity.

Such discriminatory treatment undermines the justice system and could hurt crime victims by preventing a fair trial by a jury of their peers. This could have particular negative impacts on victims or defendants who are lesbian, gay, bisexual, transgender or queer. The right to a trial arbitrated by a jury of one's peers cannot be truly realized without protection from discrimination during the process of jury selection.

Preventing individuals from participating in a jury simply because of their sexual orientation, gender identity or race infringes on the fundamental right to an impartial jury and to the reciprocal right to jury service.

Eleven states prohibit discrimination on the basis of sexual orientation in jury selection, while eight states prohibit discrimination on the basis of gender identity in jury selection.

These protections are not a new idea. They just need to be codified to be preserved. For the legal eyes on the Judiciary Committee, I have a couple of legal citations I would like to refer you to. *Batson v. Kentucky*, 476 U.S. 79 (1986) is the seminal case that protects race-based groups. *J.E.B. v. Alabama*, 511 U.S. 127 (1994) and *Watson v. State*, 130 Nev. 764 (2014) protect gender-based groups, and *Morgan v. State*, 134 Nev. 200 (2018) and *SmithKline Beecham v. Abbott Laboratories*, No. 11-17357 (9th Cir. 2018) protect sexual-orientation based groups.

SENATOR PICKARD:

I was under the impression this was already the state of the law. My concern is the intent to remove a prosecutor's or defense counsel's ability to remove people from a jury based on any particular attitudes, or are they still going to be able to strike jurors who might have attitudes that might not align well with counsel's theory of the case?

SENATOR HARRIS:

It is the latter. This would not affect that ability.

SENATOR SETTELMAYER:

I was curious as someone on this Committee who does not practice law, how do you tell that? Can the prosecutors or defense counsel challenge a particular person on a jury trial? How are you going to know that attorneys decided they would have a better time with a completely female jury versus a completely male jury? How do you know that was in their calculus when picking?

SENATOR HARRIS:

Generally, you will not know. That would be incumbent upon one of the attorneys to make a challenge based upon that calculus, and the judge would make a factual determination.

SENATOR SETTELMAYER:

How do you deal with a situation where a guy is up for a DUI and sadly in a car wreck he killed a little girl, and it is a decision that the prosecuting attorneys

want to stack the deck with mothers because they feel it will better convict the person? How do you differentiate that?

SENATOR HARRIS:

Chair Scheible may have additional insights as she practices in the courtroom much more than I do. Often you are going to want to do something like that; maybe stack with mothers if you can. This bill would not affect your ability to try to pick the best jury for your client. I do not see this imposing or changing that ability at all.

SENATOR SETTELMAYER:

As the sponsor of the bill, it specifically states that jury selection should not be allowed by fact. I will have to follow up on that. I am confused because I think your bill prevents that. I think the bill has the ability to do just that.

SENATOR HARRIS:

I would argue that not all women are mothers, and so in your description of wanting to pick someone because she is a mother does not necessarily overlap with discriminating on the basis of sex.

SENATOR SETTELMAYER:

I am willing to say that all mothers are women, so I guess we will have to follow up offline.

CHAIR SCHEIBLE:

I want to ensure that I understand the purpose here is not to address discrimination at the point of creating juror lists or creating voir dices. It is supposed to be after the voir dire has already been impaneled that the attorneys on the case are not using either preemptory or for-cause challenges to systematically remove people from the jury based on their sexual orientation, gender identity, age, physical disability, race or religion.

SENATOR HARRIS:

That is correct.

CHAIR SCHEIBLE:

Is there a companion statute or policy that would address that front-end kind of de facto discrimination? When I say front-end, I mean the composition of the voir dire. How do we ensure that when I, as a prosecutor, walk into a room to

start picking my jury that we are sure this is reflective of the community to start with?

SENATOR HARRIS:

You are bringing up a really important point, and one that I was thinking about attempting to address in this legislation. This would probably have to reflect some changes in NRS 6.045 and I could not quite get there, but you are correct, we need to worry about both sides of the issue. This bill only addresses the latter.

CHAIR SCHEIBLE:

How would this bill be enforced? Generally, with a Batson challenge or a similar discriminatory challenge, it is the defendant who brings the issue first. They have to bring it during jury trial and again on appeal to explain how not only was the striking of jurors discriminatory but also how that prejudiced the defendant.

In this case, would it still have to be criminal defendants who were convicted? Overturning their convictions by citing to the statute, or does this create a civil liability or new class of prosecutorial misconduct and/or would this also create some kind of ethical violation for a defense attorney who engages in discriminatory jury selection practices?

SENATOR HARRIS:

I think your first point and your last point are probably the closest. I envision this working in a similar way the Batson challenge works today.

On your last point, I could imagine some creative lawyer drafting a rule allowing a motion for sanctions based upon violation of this statute if it is blatant, and if so, rises to some ethical level as possibly a violation of any other statute by a lawyer.

CHAIR SCHEIBLE:

To clarify, if a preemptory challenge or a for-cause challenge is used to remove me from a potential jury pool, this does not give me the right to sue the judge, the prosecutor or the defense attorney who exercised that preemptory challenge on the basis of having been discriminated against.

SENATOR HARRIS:

It does not.

CHAIR SCHEIBLE:

So that also would require some cooperation between the person who was discriminated against and the person who is actually prejudiced by the discrimination.

SENATOR HARRIS:

Yes, if I understand your question correctly.

CHAIR SCHEIBLE:

Going back to my example, if I were the person removed from the jury due to a for-cause or preemptory challenge in a civil case, and the plaintiff in the case lost and wants to say, "The reason that we lost is that the defense counsel struck all of the women from the jury," they would have to go back to the record and show that Melanie Scheible was struck from that jury because she was a woman. But I would not have a private right of action as the juror who was discriminated against?

SENATOR HARRIS:

That is correct, no private action for the jurors for having preemptory challenges used against them. It is only designed to protect the rights of the alleged person.

This is part of the reason for section 1, subsection 3, paragraph (b). This is not designed to grant someone an absolute right to serve on a jury or create any rights that people do not already have.

SENATOR HANSEN:

What problem are we trying to solve here? Right now, I think you practice law primarily in Clark County. The defendant's attorney would want to do everything possible to get people on the jury favorable to them. Therefore, the problem must be the Clark County District Attorney's Office. Is there a problem with the way their office is currently selecting? I cannot help but note that virtually everyone who I have seen at the legislative level has been White.

Is there a problem on the prosecution side in Clark County with jury selection, and is that what you are targeting with this bill?

SENATOR HARRIS:

Both prosecutors and defense attorneys use preemptory challenges, and both sides have an equal opportunity to say that a juror was struck unfairly under caselaw. What we are trying to do is put statutory protections in place that make it clear in the State you cannot discriminate based upon these factors.

SENATOR HANSEN:

So, you are basically saying, in your opinion, there are no current problems with jury selection by the Clark County prosecutors?

SENATOR HARRIS:

I have not been alerted to some flurry of failed issues of prosecutors striking people unfairly.

CHAIR SCHEIBLE:

We will conclude the presentation portion and move on to testimony on S.B. 223.

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

I am testifying in support of the amended version of Senate Bill 223. I am addressing Senator Scheible's point of NRS 6.045, that is not addressed in this bill, because we do have a problem. Although Assemblyman Fumo tried to fix it with getting information from the Department of Employment, Training and Rehabilitation, it is my understanding that information is not being turned over to make more diverse jury pools.

To Senator Hansen's point, your question is right on target. Neither Senator Scheible nor Senator Cannizzaro is guilty of this, but the Clark County District Attorney's Office as a whole has a long and tortured history of violating and getting serious cases reversed because of their problems with that issue. I can get those cases and lists to you in the future.

MR. WADE:

I support S.B. 223 and note that often LGBTQ folks are discriminated against for their actual or perceived identity. We have to be careful we do not assume that just because someone does not know that someone is from the LGBTQ community that the person will not be discriminated against.

With these efforts across the board to increase data collection and ask people their sexual orientation and gender identities as better known disparities, people are a lot more willing to state their sexual orientation and gender identity. It is not a taboo subject for many folks.

Lastly, this bill would help to solidify that folks cannot discriminate against people for any reason and particularly around jury selection.

NICHOLAS SHEPACK (American Civil Liberties Union Nevada):

We echo the comments of those who spoke before us. Every defendant in state and federal courts alike has the right to be tried by an impartial jury that represents a cross section of the community and does not intentionally exclude persons of the defendant's race, religion, sex, sexual orientation, gender identity or expression, national origin, age or physical disability.

The American Civil Liberties Union has been active in ensuring fair and diverse juries since the early 1960s. This bill is one more positive step in that direction. While *Batson v. Kentucky* offers some protections from discretionary jury selections, stronger protections and State statutes will help to ensure more fair juries. We urge you to support this important legislation.

MS. SAUNDERS:

We support S.B. 223. Everyone in Nevada deserves access to a fair criminal justice process. It is essential that we do not allow discrimination to impede the jury selection process, and we urge your support of this legislation.

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

We want to start the conversation about improving our jury system. As Mr. Piro mentioned, this is just one step we need to make to ensure our jury trials consist of individuals who make up a fair cross section of our communities and are fair, unbiased and truly a jury of our peers.

John Oliver recently put forward some information about why it is important to ensure that we are having a representation on our juries.

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):

Nevada Attorneys for Criminal Justice (NACJ) support the bill with the proposed amendment. There are problems with jury selections, and there are problems with discrimination.

That is not to accuse Senator Scheible or Senator Cannizzaro of any of that, but there are problems and that is the reality. Numerous cases have been reversed by the Nevada Supreme Court.

I think that the bill is a good step towards correcting some of those problems. I do not think it goes all the way, but NACJ supports it.

DAVID BOEHRER (Nevada Justice Association):

We have a neutral stance on S.B. 223. We appreciate all the work that Senator Harris is trying to achieve in making sure that our juries are representative of our population and have diverse ideas and thoughts we can bring to the Legislators.

We appreciate working on this to make sure that the language works. We are working with Senator Harris closely trying to get it so that this does not infringe upon attorneys' right to pick the right juries for their cases.

SENATOR HARRIS:

Chair Scheible, you hit on an important point, and that is something that I am going to attempt to tackle next Session. I need to have a lot of discussions about the best way to ensure that our jury pool itself is diverse, or maybe amend in the Assembly to address that.

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CHAIR SCHEIBLE:

I will now close the hearing on S.B. 223. This concludes our meeting today of the Senate Judiciary Committee. We are adjourned at 3:28 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			Agenda
S.B. 203	B	1	Chris Wakefield / University of Nevada, Las Vegas	Opposition Testimony
S.B. 203	C	1	Cary Silverman / American Tort Reform Association	Opposition Testimony
S.B. 223	D	1	Senator Dallas Harris	Proposed Amendment