

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
March 25, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Thursday, March 25, 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
Gina LaCascia, Committee Secretary

OTHERS PRESENT:

James Kemp, Nevada Justice Association
Deray McKesson, Campaign Zero
Sam Sinyangwe, Campaign Zero
Katie Ryan, Campaign Zero
Holly Welborn, American Civil Liberties Union of Nevada
Christal Folashade
Annemarie Grant
Chuck Callaway, Las Vegas Metropolitan Police Department
Jameelah Lewis
Nissa Tzun, Family View of Justice
Teena Acree
Eric Farah
Tonja Brown, Advocates for the Inmates and the Innocent
Kendra Bertschy, Office of the Public Defender, Washoe County

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John Piro, Office of the Public Defender, Clark County
Lisa Rasmussen, Nevada Attorneys for Criminal Justice
Corey Solferino, Washoe County Sheriff's Office
Eric Spratley, Nevada Sheriffs' and Chiefs' Association
Leslie Turner
John Abel, Las Vegas Police Protective Association
Ronald Dreher, Reno Police Protective Association; Public Safety Alliance of Nevada
Calli Wilsey, City of Reno
Troyce Krumme, Las Vegas Metro Police Managers and Supervisors Association
Jason Guinasso, Police Officers Research Association of Nevada
Tenisha Freedom

CHAIR SCHEIBLE:

Today's meeting is now open, and I am requesting Committee introduction of the following bill draft requests (BDRs): BDR 5-498 and BDR S-500.

BILL DRAFT REQUEST 5-498: Revises provisions relating to juvenile competency. (Later introduced as [Senate Bill 366](#).)

BILL DRAFT REQUEST S-500: Requires the implementation of a pilot program relating to the housing of certain youthful offenders. (Later introduced as [Senate Bill 365](#).)

SENATOR OHRENSCHALL MOVED TO INTRODUCE BDR 5-498 AND BDR S-500.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CANNIZZARO WAS ABSENT FOR THE VOTE.)

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CHAIR SCHEIBLE:

I now move to our next bill draft request, which is BDR 14-375, and I am requesting Committee introduction.

BILL DRAFT REQUEST 14-375: Revises provisions relating to criminal procedure. (Later introduced as [Senate Bill 369](#).)

SENATOR OHRENSCHALL MOVED TO INTRODUCE BDR 14-375.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHEIBLE:

I now close the BDR introductions and open the work session for today on Senate Bill (S.B.) 107.

SENATE BILL 107: Makes various changes relating to the statute of limitations for certain causes of action. (BDR 2-872)

PATRICK GUINAN (Policy Analyst):

As Chair Scheible mentioned, we have one bill on work session today, S.B. 107. It is sponsored by Senator Ohrenschall and this Committee first heard it on February 18.

This bill establishes a four-year statute of limitations to commence an action for wrongful termination of employment. It also requires that the existing default four-year statute of limitations must apply to causes of action not otherwise expressly prescribed by law regardless of whether the cause of action is analogous to any other cause of action for which a statute of limitations is expressly prescribed by law.

Senator Ohrenschall's amendment that makes two changes is in the work session document ([Exhibit B](#)). The first change is to delete paragraph (e) in section 1, subsection 2 of the bill concerning the four-year statute of limitations. The second change is to add paragraph (g) in section 1, subsection 4 which concerns tolling of the two-year statute of limitations.

We have James Kemp from the Nevada Justice Association (NJA) with us today to discuss the amendment to S.B. 107.

SENATOR OHRENSCHALL:

The amendment reflects a lot of talking and negotiations between stakeholders. I cannot say that every stakeholder is supportive, but the majority of people who reached out to me and to Mr. Kemp are supportive of this amendment.

JAMES KEMP (Nevada Justice Association):

The amendments to S.B. 107 seek to clarify common-law wrongful termination claims recognized by the Nevada Supreme Court will be subject to a two-year statute of limitations, but that time will be tolled during the time period which any complaint or charge is pending before an administrative agency, such as the Nevada Equal Rights Commission (NERC). This is so a person does not need to file a common-law, retaliatory or wrongful discharge claim during the time it is still being considered by the administrative agency. The idea here is to get the timing to match up. For example, with the NERC's right-to-sue notice that gives people 90 days to file a law suit after they are issued a right-to-sue notice, this amendment would provide 90 days plus a few days for mailing. This is so the timing for filing the common-law wrongful termination claim matches up with that for bringing the discrimination or retaliation claim recognized by the antidiscrimination statutes in *Nevada Revised Statutes* (NRS) 613. This is the purpose of the amendment to S.B. 107.

SENATOR PICKARD:

Mr. Kemp, I appreciate our conversations we had discussing S.B. 107. I want to get all this on the record because this bill appears to be hotly contested in cases where there are questions about common law—we are not a common-law State. We have not generally adopted the common law except where the Supreme Court has specifically adopted other things such as actions against public policy and a few other instances. I want to make sure when we are adding common-law wrongful termination, we are not through the backdoor adopting the common-law or wrongful termination of employment but addressing those adopted by the Supreme Court up to this point. Although the court may elect to in the future, this is not a wholesale adoption of the common law. This only allows us to address those currently adopted and not moving to the contract, which would be a three year. Is that an accurate statement?

MR. KEMP:

Let me put your mind at ease Senator Pickard. Senate Bill 107 is just a statute of limitations bill. It does not recognize any particular causes of actions or claims; it only identifies the time limits under which those claims can be brought

in court. The common-law claims we are talking about are the ones the Supreme Court has by common law established the at-will employment doctrine which means an employee can be fired for any reason or no reason at all as long as that reason does not violate the law in some other way. For example, if it was illegal discrimination on the basis of age, race, religion, national origin, gender, disability or if it would violate common-law strong public policy principles, that is the case we are talking about here. They have been recognized as common-law claims by the Supreme Court. It is common law because they are not recognized by statute via the Legislature. These are claims the court has created through its inherent common-law powers to recognize the claims that violate public policy. I also want to note that the Supreme Court has been clear that these exceptions to the at-will doctrine are narrow and limited. If S.B. 107 becomes law, it will apply to those the court has recognized, but it also has the flexibility to show that in the future, the court may recognize others. Those would be covered by S.B. 107 as well. This is why we use the term common-law wrongful termination claims, those that have been recognized by the Supreme Court in contrast to the ones recognized and enacted by the Legislature.

SENATOR HANSEN:

With this new law, if an employee sues an employer and the case is dismissed by the court, would that employee be able to file another identical claim against the employer? They get one shot at the district court level and are not allowed to keep recycling the whole process.

MR. KEMP:

If you are asking if someone brought a claim and it was dismissed by the district court, would this person be able to refile the claim. This would depend on how the district court addressed the claim. If the case was dismissed without prejudice, then a person could refile a claim. For example, if someone did not specify in the pleading something that was important or did not cover all the bases required in a pleading to state a valid claim, the employee would be able to refile again because it was dismissed without prejudice—this is only if the person refiles within the statute of limitations.

SENATOR HANSEN:

That is the practice now. It is not something new with this law, correct?

MR. KEMP:

Senate Bill 107 would not affect this at all. There is a finite period in which these claims are valid. If a person brought the claim on the very last day of the statute of limitations and the court dismissed it without prejudice but without leave to amend, that person would be basically stuck and not able to refile.

SENATOR SETTELMAYER:

It seems that this would create a situation where under statute, a person would have the ability to bring up a discussion and so by changing this law, I am concerned because there is a time limit an employer, under law, would keep employment records. What will happen in these types of employment termination cases when we adjust this time frame if the employer does not keep the documents for the new extended period of time which is somewhat unlimited?

MR. KEMP:

I recognize the concern, but in these particular circumstances where someone has brought a charge related to the termination of his or her employment related to things that took place in the employment, the administrative agency will have given notice to the employer of a pending charge; thereby, the employer will be given notice to preserve and secure all records concerned in order to respond to the charges. This is done in the normal course of any employment-related charges.

SENATOR SETTELMAYER:

I do have some concerns when a person is in a case with someone who has nothing related to the concept of termination and then several years later, a charge shows up that has something to do with the previous case, but those records are no longer available.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 107.

SENATOR CANNIZZARO SECONDED THE MOTION.

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

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CHAIR SCHEIBLE:

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.

The work session is now closed. The hearing on S.B. 212 is now open.

SENATE BILL 212: Revises provisions relating to the use-of-force by peace officers. (BDR 14-215)

SENATOR DALLAS HARRIS (Senatorial District No. 11):

Senate Bill 212 is about modernizing the use-of-force policies, and I will talk about why we would want to do this. Please refer to my presentation ([Exhibit C](#)).

While the Las Vegas Metropolitan Police Department (LVMPD) has instituted great use-of-force reforms, it is in direct response to use-of-force incidents such as officer-involved shootings and death from officer-involved shootings. Las Vegas has reported a 20 percent increase since 2017 and an 18 percent increase last year alone. After seeing a 22 percent decrease in use-of-force incidents from 2015 to 2016, our incidents are increasing across the State. These incidents are becoming more deadly. Fatalities involving officer-involved shootings have nearly tripled. In 2020, one in two officer-involved shootings resulted in a death as compared to one in five in 2019. We need to decrease these numbers. Reforming when deadly force is used to when it is necessary, and improving the reporting of use-of-force incidents across Nevada is how we get there.

Use of force is also a racial justice issue. Reno is the deadliest city for Black men at the hands of police in the United States. Washoe County as a whole is equally as high. Unfortunately, as you can see in my presentation, Nevada has two entities in the top-seven cities as Las Vegas also killed Black men in police custody at rates higher than they would otherwise be killed. Police use of force should never be higher than the murder rate. We should expect our peace officers to serve and protect. To do so, we must modernize our approach to use of force to understand the issues; report the data; provide alternative techniques; train officers; and create a culture where use of force is the

absolute last resort. While cities are most often under fire, the research shows that nationally, more people are killed by police in the suburbs. This is why use-of-force changes are necessary Statewide.

More restrictive use-of-force policies do not limit what peace officers can do. If an officer is in a situation where someone poses a threat of serious bodily harm or death, they are allowed to use deadly force in response. However, there are many steps that officers can take before deadly force should be a consideration, and the majority of incidents can be resolved using less force. Using deadly force because you can, and feeling justified because it is in the arsenal, shows a demonstrated lack of commitment to preserving life—a lack of training or worse.

Several tried and true steps can be implemented prior to use of any force, and it is important that we equip our law enforcement agencies with all of those tools. There are also long-term implications from frivolous and frequent use of unnecessary force. First, escalation is more likely if a mere presence of an officer indicates that use of force is not just a possibility but a probability.

Two, the public lacks trust in the people who are sworn to protect. And finally, there is control. The point of a police instruction is for an officer to get the situation under control. The perception that an officer will immediately resort to force adds additional tension to situations and puts witnesses and others on edge.

Campaign Zero has identified eight critical use-of-force policies that can help in reducing use-of-force incidents resulting in violence. This includes abandoning the choke hold, the restraining hold, which has been done in Nevada with the passage of A.B. No. 3 of the 32nd Special Session. These policies also require de-escalation of situations, a warning before shooting and exhaustion of all other alternatives before resorting to deadly force. They include a duty to intervene by officers who witness unlawful police violence which we were also able to accomplish in A.B. No. 3 of the 32nd Special Session. There is a ban on shooting at moving vehicles, requiring use-of-force continuum be established and continually reinforcing training as well as comprehensive reporting.

Some Nevada police departments have embraced police reform, but it is imperative that all agencies enact the appropriate measures to keep Nevadans and officers safe.

The intent of S.B. 212 is to help modernize the use-of-force policy by strengthening it across the State and standardizing the expectations so officers and people know what to expect regardless of jurisdiction. The first step is to make sure officers in Nevada assess the situation before resorting to a higher level of force. Las Vegas has identified each force option with the level of control with increasing escalation responses and specific tactics and weapons associated with each level. This helps officers make the right decisions, using the right tools as a situation escalates. A use-of-force continuum can serve as a guideline to assessing and reacting to situations. The Reno Police Department does not use such a continuum. Senate Bill 212 addresses this by requiring officers to use de-escalation techniques and alternatives to higher levels of force.

Section 2, paragraph 1 of S.B. 212 has the de-escalation techniques which have been studied in many industries including health care and education. As the first step in the use-of-force continuum, techniques can reduce stress, provide calm and help officers maintain personal and situational control. These techniques are effective in managing offender aggression which is the key trigger to situational escalation and increased levels of control. Officers need to internalize these steps so they can seamlessly execute them in the correct order. Creating a culture that celebrates a reduction of the incidents of violence is necessary.

All law enforcement agencies should be repeatedly trained in de-escalation techniques and utilize them prior to higher levels of force. If deadly force is necessary, officers are required to give a verbal warning, identifying themselves as a peace officer or through physical identification, prior to using deadly force. Interestingly, most citizens believe that one of their rights is that a peace officer must give you a warning before shooting. However, it is neither a right nor a consistent policy across law enforcement agencies in Nevada. Outside of Nevada, 426 cities in the United States require a warning before shooting and so should Nevada.

These additions will simply modernize the policies to meet the expectations of communities and to ensure officers have reached the final step prior to the utilization of deadly force.

Section 2, subsection 1, paragraph (b), subparagraphs (1) and (2) amend the statutes to include the level-of-force determinants. First, officers may only use

the level of force that is reasonable under the circumstances to bring the situation under control and safely accomplish a lawful purpose. Next, the level of force must be balanced against the level of force or resistance exhibited by the offender. The use of force at this time must be carefully controlled to the extent feasible. If an offender flees into a public park, it would not be considered reasonable for an officer to start shooting into the crowd, putting innocent lives at risk in an effort to apprehend a subject.

Additionally, this law seeks to impose policy and training around use of force for people who do not pose a threat of deadly bodily harm or death if the person is not armed with a deadly weapon and appears to the officer to be under the age of 13 or over 70 years old, physically frail, mentally impaired, pregnant, suffering from a behavioral health issue or experiencing a medical emergency. Written policy and training will be required regarding the potential threat of someone with these listed characteristics. This policy training must reflect the best practices with respect to use of force.

In response to the summer of 2020 and the events of January 6 at the U.S. Capitol, one thing rings clear, we need to revise policies to address police response and use of force when people are peacefully assembled. Section 4 of S.B. 212 amends NRS to include restrictions on several nonlethal weapons. The first is restraint chairs. The use of restraint chairs has been outlawed in multiple states across the Country. There is no viable reason to use a restraint chair as it constricts blood flow and will cause severe injury and even death. However, these chairs are used in the systems, in juvenile settings and in mental health settings. This bill has reasonable restrictions around the use of these chairs. The following limitations have been added to the use of restraint chairs: they should only be used to restrain an individual who demonstrates obstructive, assaultive or life-threatening resistance. A supervisor must authorize the use of the chair. A person placed in the chair must remain under direct visual observation until screened by medical staff and every 15 minutes after that. Medical staff should be notified when the chair will be used and conduct an initial assessment of the person who will be placed in the chair. The person should be assessed frequently—elapsed time not to exceed 30 minutes—by a supervisor to evaluate that person's level of resistance in order to be removed from the chair. Restraint chairs will not be used to restrain pregnant persons. Persons should not be restrained for longer than two hours with additional approval from the supervisor. A restraint chair should not be used to threaten anyone who is not otherwise demonstrating obstructive, assaultive or life-threatening resistance.

Taking steps to limit the use of restraint chairs will significantly decrease incidents that result from the use of these chairs. It will also allow departments to consider other techniques for restraint when restraint chairs are not an option.

Peaceful demonstrations are the core tenants of our democracy. Peace officers should not assume that an assembled group is intended to do anything more than voice opinions against injustices that members face. However, police response to demonstrations has often resulted in medical injuries when groups have assembled peacefully, making it necessary to amend the statute to give more direction on the appropriate response.

The first is to limit the use of kinetic energy projectiles like rubber bullets. Peace officers should not be indiscriminately discharging these into a crowd nor should they intentionally target the projectiles at a person's head, pelvis, spine or other vital areas. The purpose of using these types of weapons is to control or disperse the crowd. Therefore, firing them should be controlled.

The next change addresses the use of chemical agents. This bill restricts the use of chemical agents to an instance where unlawful assembly has been declared, and the discharge should follow specific orders to disperse that have been heard and understood by the assembled group. This may mean having interpreters or other resources available to translate this information by accompanying the peace officers. Also, the group must have a clear route of egress. If a crowd ordered to disperse is confined by police barriers or buildings, officers must give the group space to disperse. Finally, officers should allow sufficient time for the group to disperse before discharging a chemical agent.

The final step in modernizing Nevada's Statewide use-of-force policy is comprehensive reporting. None of Nevada's law enforcement agencies comply with the use-of-force policy that requires comprehensive reporting. We do not have the ability to put these into a Statewide reporting database. Reporting across jurisdictions is fragmented and inconsistent. Washoe County reports race but does not separate the types of use-of-force incidents. The LVMPD reports incidents, but it does not have any demographics about those involved. Henderson Police Department reports substantial external complaints of force. This bill would allow our police departments to centralize all this information through the Central Repository for Nevada Records of Criminal History and not add additional work on their behalf, and it would make that information public.

Standardized reporting is important so that every department is reporting the same information in the same way, and recommendations on improving statistics can be made. All law enforcement agencies need to collect data consistent with the National Use-of-Force Data Collection standards from the FBI. Section 3 of S.B. 212 requires that departments participating in the Department of Public Safety Uniform Crime Reporting program report this information for analysis. And we ask the Attorney General to take a look at reporting and make recommendations to this Legislature to identify any issues to be addressed.

In summary, Nevada has the opportunity to lead in police reform. Some cities have already begun. It is imperative that we strengthen our use-of-force policy to reduce incidents of police violence, address issues of other types of violence, help officers be prepared to use alternatives to deadly force and use data to improve the systems of justice. Senate Bill 212 is our path to success for making Nevada a safer place to live, work and thrive.

Speakers to assist me in presenting this bill who will provide expert testimony are Deray McKesson, Sam Sinyangwe and Katie Ryan.

DERAY MCKESSON (Campaign Zero):

Campaign Zero has headed up this work across the Country, helping cities and states think about use-of-force policies differently. We started in 2015, and the latest big push surrounded a campaign called "8 Can't Wait" at the beginning of June 2020. Since then, this is one of the biggest changes in police policy in American history. Ms. Ryan will speak later about the scope, and Mr. Sinyangwe will help us understand the research behind what we do and why it actually matters.

Like Senator Harris said earlier, this is an opportunity to actually do something that will save lives. It is important that at the State levels, these types of changes happen so it is not only the major departments because we found that across the Country, most of the killings by police happen in suburban communities, not in cities. We want to put these rules in place to be preventative.

These rules are tried and true. As Senator Harris said, more restrictive use-of-force policies have saved lives.

SAM SINYANGWE (Campaign Zero):

I will provide an overview of the data regarding why these types of policy restrictions can make a difference. There has been a host of conversations over the past six to seven years about police violence in this Country and how it particularly impacts Black and Brown communities. In looking at the research literature, almost four decades of research has consistently found places that have more-restrictive, use-of-force policies in city after city. For example, places that ban officers from shooting at moving vehicles, ban choke holds and strangleholds, require officers to use de-escalation and other alternatives to deadly force and include comprehensive reporting around use of force as well had significantly fewer killings by police. These places were safer for the officers as well because they were not rushing into situations and using force. They used de-escalation to prevent adversarial encounters in the first place.

We have seen cities across the Country that have begun to enact more restrictive policies beginning in June 2020. This is particularly important for Nevada where you have 147 people who have been killed by the police from 2013 through 2020. Nevada has the fifth-highest rate of fatal police violence in the United States. In the context of those 147 people, only one case was found where an officer was being charged with a crime, and charges were later dropped. There is little accountability from the criminal justice system in terms of stepping in and holding officers accountable. Preventative measures are important so these types of incidents do not happen in the first place. Use-of-force policies are among those areas that have the strongest evidence of effectiveness. Most research completed over the years validates that more restrictions in this domain can save lives.

KATIE RYAN (Campaign Zero):

I would like to call out specifics of Senator Harris's bill to illuminate the importance of why and how Nevada can employ more restrictive use-of-force policies to stop and reduce police violence against communities.

The first is the component around requiring de-escalation. We often hear from police departments throughout the Country that officers are trained in de-escalation and strategy tactics and learn how to use lesser means of force before resorting to deadly force. However, the expectation to use or implement that training is not always codified into policy. We are asking the State to take de-escalation training and make sure it is an expectation that officers use that training when they are engaging with the public.

Similarly, making sure that officers, when feasible, and given the totality of the circumstances, give individuals an opportunity to comply with commands or verbal directions by also warning that the use-of-force is a possibility should they not comply. To make sure officers are required to adhere to a use-of-force continuum, we are outlining various types of circumstances that officers might encounter, outlining what a proportional response would be and then making sure there are restrictions on weapon use—so officers are not putting themselves and others at risk or into unnecessary volatile situations.

I want to note that these are not necessarily earth-shattering policies. As Mr. Sinyangwe and Mr. McKesson mentioned, we have 40 years of research and analysis to substantiate that these types of policies actually reduce police violence. From our experience and since the death of George Floyd in May 2020, we know that 340 cities across the United States have adopted more restrictive use-of-force policies. Thirteen states have adopted some level of statewide restrictive use-of-force policies. We want to support Nevada in being in line with the states showing their communities that they want to hold officers accountable and apply more justice in policing, especially as it relates to Black and Brown communities.

You can look up more information on the Research Basis for More Restrictive Use of Force ([Exhibit D](#)).

SENATOR HARRIS:

Senate Bill 212 is still a work in progress. Plenty of discussions are pending to make sure we get it to a point where all stakeholders feel we are serving the community. I still have some concerns to address but wanted to put that on the record. I invite the "8 Can't Wait" team to assist in answering questions the Committee may have.

SENATOR HANSEN:

This is an incredibly one-sided, loaded presentation. The fact that our law enforcement community will be limited to two minutes to rebut some of these charges is outrageous. I have been on a House Judiciary Committee for six terms now, and that presentation and some of the accusations made need to be rebutted. Our law enforcement agencies should have equal time to do that.

Three people presented to this Committee as experts—Deray McKesson, Sam Sinyangwe and Katie Ryan. Can you three tell us why you are experts in

this field? Are you three professional criminologists, what are your credentials? What makes you experts?

SENATOR HARRIS:

Senator Hansen, I am sorry that my presentation offended you so much. I would like to let you know ...

SENATOR HANSEN:

I am not offended. I just think it is highly one-sided.

SENATOR HARRIS:

I have worked with law enforcement agencies on this bill. When we get to testimony, you will see that they are in support. I have submitted an amendment ([Exhibit E](#)).

SENATOR HANSEN:

Really? And they agree with the statistics you have presented that Reno, Nevada, is the highest? I would like to know the actual numbers of Black people killed by police in Reno, Nevada, from 2013 through 2020. I live in that community. When there has been a killing, the NAACP and all sorts of organizations are brought in to verify whether the police actually used some sort of racial injustice in the motivations of any shootings. Every single case I am aware of was considered a justifiable shooting.

MR. MCKESSON:

I was one of the original organizers in Ferguson, Missouri, in 2014. Once the protest ended, we were trying to figure out the structural change data. We manage the most comprehensive database of police violence in the United States. That is three databases of police violence. Remember, the federal government is not one of the three because only 40 percent of American police departments report to the federal government. The federal government does not release disaggregated data at the department level or the actual action-type level. The three databases are *The Washington Post*, Fatal Encounters and our own Mapping Police Violence. *The Washington Post* only codes on-duty killings that include a gun. That means George Floyd is not in that database because he was not killed by a gun. Others would not be in that database if they were killed by off-duty officers.

Fatal Encounters counts anybody who was killed in the presence of police. That includes death by suicide.

Our database, Mapping Police Violence, is the most-cited database of police violence in the United States. It is the only database that is all on-duty, off-duty and all weapons. It has been used in a range of cities that Mr. Sinyangwe can tell us more about.

We also manage the only public database of use-of-force policies in the United States. We are the leading experts around the use of force. This database is the only analysis of use-of-force policies that has ever existed—we manage it. We also manage the only database of police union contracts in the United States. Twenty-one states have state-level legislation around policing—we manage those.

The last campaign we managed was around no-knock. We are working with 50 cities and states around banning no-knock raids in communities. We also work with a team of researchers and experts on all our campaigns. I would be happy to provide you with the research basis for this as it is all publically available.

Mr. Sinyangwe can answer your questions about the data regarding Reno, Nevada.

SENATOR HANSEN:

Thank you. Just because you manage a database, I am not sure that raises you to an expert on criminality in the United States. You also mentioned your background started in Ferguson, Missouri. Is it not true that Eric Holder, who was the Attorney General of the United States in 2014, actually exonerated the police in that situation?

MR. MCKESSON:

Exonerated might not be the legal term I would use, but the Department of Justice (DOJ) did not intervene in that situation in a way protestors would have wanted.

I can tell you my personal background. At the age of 30, I was the youngest chief of the Office of Human Capital in the history of the City of Baltimore. I have taught in the school district there, and now I work on the police violence

database. I am happy to provide the length of my resume work around structural change. I push back on the idea that the only people who have the license to say how officers can use force are the police; I do not believe that is true. And I do not believe that the academy people are the only ones who can make decisions or provide input about how force is used in a community. People in the community should be a part of the process in deciding how force is used in their community. I would never accept a definition of an expert as one who excludes people's link to reality from being a part of their expertise.

SENATOR HANSEN:

I do not claim to be an expert in all these fields. Police departments in Nevada have worked aggressively to minimize any kind of violence. I chaired the Assembly Judiciary Committee at one time, so this is not a new issue for me. I support the idea of reducing any kind of violence, not only by the police but by the people who assault the police. It is a two-way street in many cases. I support the concept behind this to reduce and minimize the violence, but I do not think the Reno Police Department is the most racially motivated police department in the United States based on the one-sided slide showing it as the worst in the Nation.

My apologies Chair, if the other two would like to tell us why they are experts in the field, I would appreciate that as well.

MR. MCKESSON:

I would ask that Mr. Sinyangwe talk about the data because we stand by the data; we are not making up stats about Reno.

CHAIR SCHEIBLE:

I did approve your presence here as experts on this topic, being familiar with Campaign Zero's work, "8 Can't Wait" and the three of you, individually, with all the work you have done in this field, I am honored that you took the time to help us understand the landscape of our State.

If you do want to expand on those qualifications, we would like to hear from you. You could probably focus in on Senator Hansen's main concern with the data from Reno though it is not necessarily related to the bill.

MR. SINYANGWE:

All of our data is public and online. There were 147 people killed by the police in Nevada during the time frame 2013 through 2020, and we did provide an individualized list of all those cases. There are patterns, not only in Nevada, but across the Country, where police violence is disproportionately impacting Black and Brown communities. Some cities have higher rates of police violence than others, and particular cities have rates that are outliers. In disaggregating that data, we point to particular places that have elevated rates of police violence within the State.

The 147 incidences across the State from 2013 through 2020 include fatal police violence only. We do not have good data on nonfatal police use of force which often occurs much more frequently. This legislation, S.B. 212, is important to require the departments to provide broader data—not only on fatal use of force but on nonfatal use of force as well—so we can understand the dynamics of each. The data can tell us that Nevada has the fifth-highest rate in the United States of killings by police. Those killings by police are concentrated in particular cities and by particular agencies that should get a second look by the State and the city legislators. A whole host of additional data we cannot access could have more information to consider. All of this is the purview of this conversation and why this legislation is important.

SENATOR HANSEN:

I appreciate that, but what is the actual number for Reno from 2013 to 2020? Was it one, two, ten, how many Black people were murdered or killed by the Reno Police Department? I would like the actual number.

MR. SINYANGWE:

I would be happy to send you the raw data, case by case, if you would like.

SENATOR HANSEN:

You do not have it right now in front of you?

MR. SINYANGWE:

The numbers are on the website. You can go there and disaggregate it.

SENATOR HANSEN:

You are the one making the presentation.

MR. MCKESSON:

It is not a secret. We will send you the number.

SENATOR PICKARD:

I am impressed by the abilities that I see from Mr. Sinyangwe and Mr. McKesson, in terms of their ability to articulate and communicate a lot of data and information.

The presentation suggests the police are not using de-escalation techniques in Nevada. Is there data that shows what the police are using? I have been under the impression that law enforcement officers universally try first to de-escalate. Can you tell me what the data shows in terms of how few de-escalation attempts were made?

SENATOR HARRIS:

Senator Pickard, I want everyone to keep in mind that this is not an accusatory bill. This is a bill about putting the best practices into statute to ensure uniformity across this State. It is not to say, "Hey, you, Reno. You are a bad guy, and we are coming after you." This is to say we have learned a lot over the course of 40 years about what type of techniques work and the best policies. We should go ahead and codify these to make sure they are uniform across the State. I do not know if my colleagues from Campaign Zero have the exact numbers, but I want everyone to understand that this is not about Officer "X," who we know did not use de-escalation techniques. This is about taking the best practices we can all agree on and put them into policy so these things do not happen moving forward.

MR. MCKESSON:

Police departments do not record de-escalation attempts; it just is not done. The bill would require de-escalation tactics. Around the Country, police departments say they train on de-escalation, which is true. Few police departments do not train on de-escalation, but that does not mean de-escalation is required in an actual instance. This bill would require de-escalation.

MR. SINYANGWE:

To the point of data around how often officers are de-escalating, few police departments include de-escalation as a reportable type of force alternative. Chula Vista Police Department in California is one of the departments that does report those types of instances.

More broadly, there is data on how often police officers use an alternative to lethal force—particularly looking at less lethal force, other levels of force in lieu of deadly force. In California under the URSUS Program, Use of Force Incident Reporting has been in place for several years due to California state legislation. This Program regularly publishes data on every police shooting, both fatal and nonfatal, in California and requires every agency that reports this data to specify what types of other forces were used in the context of each incident as well as the order in which force was used. From this data, we can see if police attempted to use a Taser and other forms of physical force before an escalation to shooting. When we look at all this data from 2016 through 2018 in the database, more than 80 percent of all police shootings in the state show the police reported using no other type of force other than deadly force. They did not attempt to use less lethal force. Another 10 percent or so of incidents have issues with the order in which agencies report the shootings. Using the police statements, media reports and other information where they did not report an order of attempts, they could have used an alternative force before they used deadly force.

Between 80 percent and 85 percent of cases in California involved an officer who shot someone without using a lesser means of force first. This has changed now because of state legislation restricting the deadly force standard that passed recently. Those types of restrictions can be impactful as S.B. 212 would be as it is rare for officers to use less lethal alternatives prior to deadly force.

SENATOR PICKARD:

I should have been clearer. I was looking for Nevada data. The policing all over the Country is different in every single jurisdiction. There are obviously some commonalities, but I am interested in the Nevada data because, presumably, the statute is applied only in Nevada. I need to understand how this is changing the status quo as I thought the presentation said our police are not using the de-escalation technique but are using the restraint chairs. This is the first time I ever heard that restraint chairs can kill someone. A number of things in the presentation indicate "shall not," and I can envision instances where restraints would be necessary to protect everyone around the offender and perhaps the offender as well. I have not had a chance to review the amendment to S.B. 212, which addresses some of my concerns. I am trying to get to the data and figure out the actual status quo and what we are trying to fix. I reject the idea that we want to put everything along the lines of good practices into

statute because that is the purpose of regulation. I also reject the idea that even if you train for something, it does not necessary apply because that is the standard officers are held to in any kind of litigation. With that as the backdrop, I want to understand what we are not doing in Nevada that this bill fixes.

MR. MCKESSON:

As a point of clarification, the training is not what they are held to from a disciplinary standard. When officers break policy for instance, they can be disciplined for that. But merely that officers are trained on it in few places leads to discipline, part of a discipline matrix or use in any of those processes. We have seen this in cities far and wide.

SENATOR PICKARD:
In Nevada?

MR. MCKESSON:

In Nevada, police departments we have worked with recently changed it to require de-escalation since June of last year. This is a good thing, but it is not the law. They could change it tomorrow back to not using the de-escalation technique and just say they train on de-escalation techniques. The law would prevent this.

It is not my understanding that in Nevada simply being trained on it is the same thing as being an actual policy and enforceable rule.

SENATOR HARRIS:

Senator Pickard, as you know, regulations are great. I am a fan of pushing things down to a regulatory body. However, one does not exist for police departments across the State. We have policies and procedures that are police department-specific. Short of regulation, we do not have that same kind of ability to require all police departments to do something.

SENATOR PICKARD:
That is a good point, I appreciate that.

SENATOR HARRIS:

It is important that this Committee understand this bill is the product of work, months of work with every group you can think of—not just community members but LVMPD, the Nevada Sheriffs' and Chiefs' Association and

Nevada Police Union—that has been at the table from the beginning. You are looking at a product vetted through multiple groups and language that has evolved over time to get where we are today.

SENATOR PICKARD:

I certainly appreciate that. The amendment looks like many iterations, and discussions have gone into it. I would not be surprised in today's political environment that organizations across the State come in and support the amended versions because they are behind the eight ball.

My initial impulse, particularly after the presentation, may not have been as strong as Senator Hansen's reaction, but I did somewhat think it is accusatory. The presentation was such that we were stopping short of a defund police argument. It sounded like you are saying our police officers are the bad guys here; for Pete's sake, these guys keep us safe and are the ones who run toward the danger instead of away from it. They deserve a great deal of respect.

What are the differences this bill will fix? What is happening that needs to stop in this State? I am quite confident that police officers throughout this State try first to de-escalate the issue. I disagree that litigation would not look at the standard of training as a baseline for liability—that is universal in litigation.

I am concerned that we are basing all of this on national data instead of Nevada data without understanding the context. Give me the context—what will this bill fix that we are not presently doing?

CHAIR SCHEIBLE:

Although Senator Pickard's question to Senator Harris and the rest of the panel of what this bill changes about our practices has already been answered, I will give the panel another opportunity to answer the question.

MR. MCKESSON:

More to the point of clarification, few officers are prosecuted or charged around force. This would mostly be an administrative issue and is always down to a policy. If a policy does not say it, in our experience, it is not likely there will be any discipline. Some big agencies in Nevada in the past year have changed policies to require de-escalation and other things. They understand that making it a policy makes this a hard-and-fast rule. Administrative consequences are

normally the only consequences, if any, that officers face when they violate a rule. The training is not enough.

SENATOR OHRENSCHALL:

In other states with amended statutes on use of force in a similar manner to what S.B. 212 seeks, have there been less violent incidents when there is contact between police and citizens? I am sure we all can agree, regardless of our party or our feelings, that we would like to not see any violence between officers and the public. Is there any data in your database for states that have adopted reform similar to this with the hoped-for outcome—that is, less violent contacts?

MR. SINYANGWE:

The short answer is not at the state level but yes at the local levels. Since this is relatively new for the state level, we have seen over a dozen states adopt more restrictive use-of-force standards in the past year. Since so much of this movement has happened so quickly, we do not yet have postdata coming in to research and understand the difference in use of force over a certain time period. What we do have and what we have tracked in other research across the Country are cities that have implemented more restrictive use-of-force policies and their impact.

We mentioned a study we conducted with a hundred-largest cities in the Country. Additional cities under study, most recently in Seattle, look at the decline in use of force following the adoption of a more restrictive use-of-force policy and a set of accountability measures following the DOJ intervention and consent decree there. They tracked not only whether use of force overall declined but if officers were safer as well. Those are similar standards as in S.B. 212, requiring the de-escalation, alternatives to deadly force, banning the shooting at moving vehicles and more comprehensive reporting.

Similarly, a host of other cities have seen declines in deadly force following the implementation of more restrictive use-of-force policies. The 40 years of research mentioned earlier began in the 1970s with a criminologist named James Fyfe, who first looked at the New York Police Department's adoption of a set of restrictive use-of-force policies. This tracked a substantial decline in fatal police violence. Since then, researchers have found similar effects in a range of cities from Columbus to Memphis to Philadelphia. Researchers in Philadelphia looked at what happens when they lift a restrictive policy. In the

1980s, they adopted more restrictive use-of-force standards for a few years under one police chief, and the deadly use of force decreased. Then that policy was repealed, and deadly use of force shot right back up. I am happy to provide the overall review of the literature on this area as it is one of the most well-studied policy areas within the broader police reform system. Now that many states are beginning to take action, we will have better data on the state level soon.

SENATOR OHRENSCHALL:

It is good to hear about the positive outcome at the local levels. Thank you.

SENATOR SETTELMAYER:

I appreciate your information. If you can, please send me or the whole Committee information specific to Nevada, especially anything broken down by county, so I can take a look at the counties I represent.

To the sponsor of the bill, is this stating you should not think about escalating a situation? If individuals are in fear of their lives, they have the right to automatically go to that level, correct?

SENATOR HARRIS:

Everyone needs to remember that we all have the right to protect our lives, police officer or not. If someone is using deadly force against you, you already have the right to use deadly force, and that applies to every citizen walking down the street today. This bill would not change that.

SENATOR SETTELMAYER:

In that respect, if deadly force was immediately actionable, what about the recent situation in Douglas County when a police officer was shot in the face—through the window of the offender's car while being pulled over by the Douglas County police—without cause and without provocation. If the other officer is automatically able to return fire, he would not need to fill out any of these reports because the use of deadly force was authorized, right?

SENATOR HARRIS:

I will point you to two things in the amendment, [Exhibit E](#). One is in section 2, subsection 1, paragraph (a), where we are putting that constraint of "if it is possible to do so safely" around it. Two is in section 2, subsection 1, paragraph (b), "objectively reasonable under the circumstances."

If your partner has just been shot in the face, that leaves plenty of room for an officer to act within the totality of the circumstances to keep oneself and the immediate public safe.

SENATOR SETTELMAYER:

However, would the officer be required to fill out a report pertaining to that information? Clearly, the officer's reaction was lawful, so why should he even have to file a report because that then skews the data?

SENATOR HARRIS:

It is not about the filing of a report, we are just collecting use-of-force incidents for general reporting. This is something LVMPD already does; it has use-of-force reports from 2014 to 2019 online. This is not about creating additional paperwork but capturing how often these things happen, who was harmed and what scenario occurred. It is something a couple of our departments are already doing, just not all of them.

SENATOR SETTELMAYER:

I appreciate that, Senator Harris. If we have officers indicating how they went about trying to de-escalate the situation, would it not also be pertinent to make sure that they document how the person they pulled over escalated the situation?

SENATOR HARRIS:

I am not quite sure if I understand your question, but I am happy to talk to you about what fields should be in the use-of-force database. Resistance from the other person is a factor in what type of force the officer should use, but that data is not collected.

SENATOR SETTELMAYER:

That is exactly where I am—we should also indicate how the offender did not try to de-escalate the situation but rather escalated the situation. When I was a kid, my dad taught me that the first thing you do when a police officer pulls you over while driving is place your hands on the steering wheel, so that the officer does not think you are trying to grab something, and be as respectful as you can and things of that nature. I will admit, however, when I first received my driver's license, I was 5 feet, 2 inches tall and 110 pounds, and the police wanted to pull me over because they assumed I stole my dad's truck.

SENATOR HARRIS:

Understood, Senator. I am happy to have further discussions about what data we are capturing and how we can capture that data.

SENATOR CANNIZZARO:

As someone who is a member of law enforcement in my day job, has done this for a decade and has a sister-in-law who is an officer, I would probably be the first person to tell you there are many amazing officers in our police departments who are trying to do the right thing and who are doing the right thing in really tough circumstances. We have seen those instances over and over again. There is a duty on us as Legislators and as a community to make sure the policies and laws that we have in place give faith to the community that that is exactly who is out there working in law enforcement. I have faith that this is the case.

I work with a lot of wonderful and dedicated officers who do a great job. I am proud to work with these people every day. We can say to the community if a police officer shows up, you will be treated fairly, and that situation is going to be appropriately handled. This bill is a good step in that direction. I recognize there is room to say we can hold police officers accountable. I do not believe officers are afraid to be held accountable when they are doing their jobs properly. We should put policies in place that make sense, that can both hold those who do not fall in the definition of accountable and those who the public can look at and say, "We have a lot of faith in the police to keep our community safe" because that is what they are doing.

I spend most of my day speaking with victims and the family of the victim of a crime, and this is what they expect from the officers when they show up at a situation that can be life-saving. I wanted to lay all this out because we do have a lot of good law enforcement in this State. I see S.B. 212 as a way to centralize and uniformly apply what we believe to be best practices in terms of de-escalation and dealing with the public. I appreciate taking a point of privilege on this because I do come at this with a different perspective.

Senator Harris, you showed the Committee a graph that has the continuum of de-escalation, and I want to be clear on the language of the bill. De-escalation is something we want law enforcement agencies to teach; we want officers to have training in de-escalation, and we want them to use what they learn in the

field. This may vary based upon the incident and the individual circumstances presented to an officer.

SENATOR HARRIS:

That is correct—that is my intention. I want police departments to ensure police officers are safe and officers continue to keep themselves safe. I simply ask that they use the de-escalation techniques before higher levels of force, if feasible and safe for them to do so.

SENATOR CANNIZZARO:

That is how I am reading your bill and amendment. But I have a couple of hypotheticals to make sure we can understand thoroughly.

In an incident where an officer pulls up on a scene and someone is in the process of stabbing a victim and not willing to stop, even upon the arrival of police presence, if that officer is not engaging in more de-escalation techniques than identifying as a police officer, under this bill, the officer may have the right to use deadly force if needed.

SENATOR HARRIS:

That is correct. Not only do officers have the ability to protect themselves but also third parties.

SENATOR CANNIZZARO:

Officers may use a Taser or less lethal force if attempting to use that force, but it is ineffective if someone is armed. That would still be a situation where under this language in S.B. 212, the use of deadly force may be appropriate.

SENATOR HARRIS:

That is correct. I will also note that while it requires an officer to self-identify, the officer also does so by being in uniform, and this authorizes him or her to go ahead and do what needs to be done.

SENATOR CANNIZZARO:

We want to make sure de-escalation happens on the part of the officers, but I want to follow up on Senator Settelmeyer's question. It is an important point that offenders must be held accountable to de-escalate as well, but I am not sure how to include this type of language in statute. Would this be a factor when determining whether the use-of-force is objectively reasonable?

SENATOR HARRIS:

It would be. Section 2, subsection 1, paragraph (b), subparagraph 1, says it "must be balanced against the level of resistance exhibited by the person." So officers should take that factor into consideration.

SENATOR CANNIZZARO:

In section 2, subsection 3, paragraph (b) lists wherein a person appears to a peace officer to be under the age of 13 years or over the age of 70 years, physically frail, mentally or physically disabled, pregnant, suffering from a mental or behavioral health issue, or experiencing a medical emergency, I definitely fall into one of these categories and have been asked, "You don't look to be pregnant, are you sure you are pregnant?" What happens when you are asking an officer to make that judgment call—or you see someone who may look young but is a little bit older, like when Senator Settlemeyer mentioned he fell into that category once, or someone who is older but does not appear older. How are we balancing things like this?

SENATOR HARRIS:

If you are asking why we are allowing police departments to adopt a written policy on how to deal with these persons and require the training, if someone appears to be the age of 10 years and is not armed with a deadly weapon, that person likely does not pose a threat of serious bodily harm. But we will allow police departments to come up with policies, the best training and procedures on how to address this important point. That is why I have "appears ... or is known" in S.B. 212, section 2, subsection 3, paragraph (b). Situations that do not fit into either of those categories is why we have an "and" here. If the officer does not know, there should be no expectation that officers be experts at identifying pregnant women.

CHAIR SCHEIBLE:

With regard to the use-of-force continuum chart in [Exhibit C](#), page 9, there is a halfway point for less use of force to the need for higher use of force. What about peace officers on the smaller side, maybe women officers still interacting with people who are threatening our communities and who may be larger, faster and stronger? Perhaps this may be the reason we do not see an officer first use a verbal warning and then go hands on, then use a baton and then go to XYZ. Is that because the use of force is somewhat personal to officers, and we trust them to utilize their best judgment in the situation, knowing we cannot account for every single one of those situations. So a small female officer responding to

a large group might be different from what we would expect of a large male officer taking someone into custody smaller than he is.

SENATOR HARRIS:

That is correct. I did not want to be overly prescriptive. In this bill, I tried to walk the line, putting the best practices into place but also allowing for police departments and officers to take different scenarios into consideration while keeping themselves safe.

HOLLY WELBORN (American Civil Liberties Union of Nevada):

Thank you, Senator Harris, for bringing this bill and moving us toward establishing a Statewide use-of-force standard. This is desperately needed in this State just as the individuals who came and presented with you today demonstrated.

There is work to be done on this bill. I will not say we love the sections on restraint chairs and are confident it will save lives as written, but we are willing to continue working with Senator Harris on that.

The bill reads that if you are walking away from a protest, you can still be shot with a projectile. We are confident that we will get there, however.

I am a member of the Victim Impact Panel in Reno, and this panel has no power or authority to make a determination whether a use-of-force incident is justified. This determination is made by the district attorney (DA). I can attest that every member of the panel is largely there symbolically; no citizen review board has any power or authority to assist the DA in making such a determination. We should look at changing this in the future. I want to make this abundantly clear on the record today.

CHRISTAL FOLASHADE:

This bill is a step toward the progressing of police practices. I emphasize that this is not where the conversations surrounding police use of force shall end; this is not a discussion that comes and goes based on the current social climate.

The events of last summer in 2020, specifically the death of George Floyd and the pandemic, have made it possible for more people to be aware of this issue. Unfortunately, it did not start there. Police use of force has been something that affects communities and especially communities of color. The No. 1 goal of

officers should be to protect and preserve the unity of human life. Additionally, accountability and transparency are crucial when considering public perception of police practices and integrity. I strongly urge the Committee to not allow the conversation to stop and to support S.B. 212.

SENATOR HANSEN:

I would like to ask Holly Welborn some questions about her experiences on the panel she mentioned.

CHAIR SCHEIBLE:

We will not do that today during the hearing because testifiers are calling in simply in support, neutral or opposition. However, I would be happy to discuss with you and the sponsor of the bill facilitation of another meeting in a less formal setting, perhaps a town hall or conference call, to ask those types of questions.

ANNEMARIE GRANT:

I am in support of this bill moving forward and hope that some of the language can be tweaked on future discussions. I support S.B. 212 because there has to be some type of guidelines in place if we are not prohibiting the use of restraint chairs entirely. It was disheartening to see language removed from restraint chairs as my brother was asphyxiated to death in another torture device used incorrectly and negligently by law enforcement in Washoe County with its hobble restraint. I understand the consequences of using these devices on community members in crisis. The hobble was used to hog-tie my brother whereas on every single page of its manual states to never hog-tie a human being. Prohibiting the use of restraint chairs is vital in preserving the sanctity of life.

Countless people have died in restraint chairs at jails and prisons. These torture devices have claimed numerous loved ones. Nicholas Pero was 36 years old, a father and a husband when he was asphyxiated to death on March 31, 2021 at Clark County Detention Center. He died within 75 seconds of being placed in the chair as deputies pushed his head down into his knees to adjust the handcuffs.

These chairs are being used in jails, a contained environment, with plenty of staff available to assist. They are not in some wild, uncontrolled environment. Brain damage begins within four minutes. What is law enforcement's definition

of evaluate? A visual look at a person is not sufficient. A verbal conversation should be had with the person in the torture device, and constant supervision should be the requirement. Why is it too much to demand law enforcement to fulfill the Eighth Amendment constitutional obligation to community members? It is care in custody, not kill in custody. I ask law enforcement what the definition of threatening is.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

I am here in support of the bill. Much of what is in the bill is already in our policies and procedures. Out of the spirit of compromise, I am in support of the proposed amendments.

I do take exception to some of the statistics given during the presentation and encourage members of the Committee to go to <<https://www.LVMPD.com>> and pull up the *Annual 5-year Statistical Report* on use of force and other information related to our use-of-force policies. The LVMPD has been engaged in collaborative reform for well over a decade and one of the first agencies to implement body cameras. In 2013, we worked in a collaborative reform process with the DOJ and completed 75 of its recommendations.

We are constantly reviewing and updating our use-of-force policies. We have collaboration with outside entities and the communities to establish best practices in our policies. We were one of the first agencies to have a duty to intervene, a duty to provide medical attention and to put someone in a recovery position, and the first agency I am aware of to have the term sanctity of life in our policy and de-escalation. We removed the Lateral Vascular Neck Restraint from our policy before A.B. No. 3 of the 32nd Special Session.

To put some things in context, the Clark County population has continued to increase. Prior to the pandemic, we had over 43 million tourists a year. We have seen an uptick in violent crimes, and our officers handle 1.5 million calls for service on average per year plus hundreds of thousands of self-initiated stops. In 2020, we had 19 officer-involved shootings, 10 of which were fatal. To one of the questions asked by Committee members, 4 of those 19 individuals were Black. All of the individuals in officer-involved shootings were armed.

JAMEELAH LEWIS:

I am one of the protestors who was arrested the very first day of the protest here in Las Vegas. I was slammed to the ground; I was told to stop resisting

even though I was not moving. I was zip-tied with handcuffs, I had snippers at my face. I was wearing a dress, and my belongings were thrown. I could not have been a threat, and I was not armed. At that moment, I was definitely fearful that I was going to lose my life. Just a few days later, Jorge Gomez lost his life in Las Vegas by the overt use of force by the LVMPD.

I ask everyone to support this bill and hold people accountable for the injustices and abuse that people have faced throughout the entire 2020 year, not only at the May protests but throughout the entire summer and continuing into this year. If you are not supporting this bill, then you are not supporting Black people; if you are not supporting Black people, then think about the side you really stand on.

NISSA TZUN (Family View of Justice):

I support S.B. 212. While it is not perfect, it is a great start. I encourage Senator Harris to continue working with our directly impacted community like our local chapter that represents over 20 cases of police violence.

I am speaking on behalf of Alma Chavez—mother of Rafael Olivas, killed by LVMPD—who witnessed her son's murder and was denied access to him afterwards and the chance to be interviewed as a witness. According to what Alma experienced, LVMPD did not verbally identify themselves when they shot her son to death.

I am also speaking on behalf of Laurie Benson, mother of Nathan Benson who suffered from a mental illness and was shot by police in the stomach. To this day, eight years later, Nathan's wounds will not heal because the police department still refuses to pay for the surgery he needs.

Legislators who find it still unnecessary are blind to the wrath of police violence that exists in our State. We have articles at the West Las Vegas Library from people who have experienced their family being impacted by police violence. I would encourage you all to check it out and open your hearts to experience those who have been impacted by police violence which was unleashed by the LVMPD. While there should be a complete ban of the restraint chairs, I support this bill because limiting its use might save lives. Restraint chairs are supposedly for de-escalation to help calm people down, but they are used as torture. We have interviewed multiple witnesses and victims of the restraint chairs and those who have lost loved ones in the restraint chairs or have themselves been

tortured in restraint chairs, meaning they were being choked while in detention. This trauma inflicted upon our impacted communities needs to stop. Their voices need to be heard. The Legislature needs to be more proactive and start listening to the voices of those impacted by police violence.

TEENA ACREE:

I stand in support of S.B. 212. I recently retired from the Navy after 20 years of service. What I witnessed happened to my uncle, Byron Williams, on September 5, 2019, in Nevada and was uncalled for. My uncle was chased, subdued and pinned to the ground. Bodycam footage shows some of the events—he told the officers over 21 times that he could not breathe. The officers ignored his plea and cry for help. Instead, they combatted his help and used vulgar and inhumane language. As a family member, witnessing what happened to my uncle was uncalled for.

My call to action here is to see how this Committee is going to fix this. It is not okay for anyone to be murdered. Their size should not matter. It does not matter what nationality they are—this is happening in America. This is happening in Nevada. This happened to my uncle. It is not okay.

ERIC FARAH:

I am the brother of Nicholas Farah who was killed by LVMPD less than two years ago. While he was not an immediate threat to himself or others, he was immediately placed into a restraint chair when arriving to Clark County Detention Center. In under two minutes, four officers killed him by not allowing him to breathe. All this was happening while several other officers and medical personnel were watching within six feet of my brother. This is not uncommon. I have talked to numerous other inmates who have lost consciousness while in the restraint chair and close to dying themselves. Why does the Detention Center use the restraint chair as a weapon on a daily basis? This is a huge reason why many other cities and states have completely banned the restraint chairs. They have also killed people. No family members should have to go through this. No action or discipline was ever taken by LVMPD or Clark County for killing my brother. The officers also threatened other inmates with the restraint chair, saying they will kill them too.

Although S.B. 212 is not enough, it is a great start. I ask on behalf of my family and my brother's two daughters, who will never see their father again, to support this bill.

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

We would like to echo the comments made by the previous callers. Senate Bill 212 is long overdue.

I do have a concern with the amendment and have a suggestion. Section 4, subsection 4, paragraph (c), should say that the person must be asked if he or she has any physical disability before being placed in a restraint chair for more than two hours, and if the answer is yes, then go back to paragraph (b). Restraints should be removed every 15 minutes, allowing the inmate to stand and then be placed back into the restraint chair. I say this on personal reasons. Hypothetically, if I were to be arrested and placed into a restraint chair, I would have issues due to my disability. If kept in the chair, I imagine that I would become upset to where officers would be more forceful on me. I have nerve damage due to a back injury. If forced to sit for any length of time, it leads to excruciating pain that I would not want to be subjected to; I would be vocal about it because it is painful when it does happen. If this happens to someone else, I could understand why the person would also be vocal about it and then restrained even longer or tighter.

KENDRA BERTSCHY (Office of the Public Defender, Washoe County):

Everyone on this Committee heard the cries from community members demanding change for some accountability and transparency with police agencies in Nevada due to deaths that have occurred here. The bill is not perfect, but we are working toward ensuring additional transparency and accountability. I do hope everyone will listen to the impacted people who are demanding change and deserving of it now.

JOHN PIRO (Office of the Public Defender, Clark County):

If you want something you never had, you have to do something that you have never done. It is time for us to reckon with things we have never reckoned with. I can—as a White man to the other White men on this Committee—acknowledge that sometimes our experiences are not the same as our Black and Brown counterparts. If it makes you uncomfortable, it is uncomfortable for me to hear, see and look at things that have been ignored for far too long and reckon with all this. It is time we reckon with this problem. As a person who was out legally observing at the protests last year, I did personally witness LVMPD hitting people walking away in the back with pepper bullets. I watched some officers grope people without appropriate warning. I watched them do things that were inappropriate. There are things we all must look at,

talk about and have uncomfortable conversations with each other, so we can get to a place of good policy for all Nevadans that protects both our community and the police officers who protect our community. It is okay to be uncomfortable, but we do have to get there and move forward.

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):

We support the bill. We do not like some of the amendments, particularly with regard to the restraint chair issue mentioned by others. We will continue to work with Senator Harris on the bill, knowing that not everyone gets what they want.

Mr. Piro is right. My experience as a White person is different than the experiences of many of our clients who are persons of color. This bill is important, and we support it.

COREY SOLFERINO (Washoe County Sheriff's Office):

Senator Harris has conducted active dialogue with law enforcement, public defenders, district attorneys and other community stakeholders during the Interim and well into this Session.

Senator Harris, who has been interested in learning industry best practices and standards in law enforcement, has been instrumental in bringing all parties together to foster neutral respect and understanding. The Washoe County Sheriff's Office (WCSO) appreciates the Senator's efforts. With the amendment presented today, we are in support of S.B. 212.

The WCSO endorses increased training opportunities and policy guidance when clearly and thoughtfully crafted to help build a stronger law enforcement community. I am proud to work for a progressive agency which has addressed these criminal justice reforms over the course of the last ten years and continues to strive for industry best practices as stewards of our community. Many of the provisions of this bill are in practice at the WCSO.

The de-escalation techniques were instructed to me in 1999 in my regional law enforcement academy. These techniques have evolved over the years to include enhanced active listening skills, critical incidences and stress management and a 40-hour block of crisis intervention training which are all being taught in our academies and agencies today. These are not new concepts. Officers do not

want to use force until they must protect life, the lives of others and to effect a lawful arrest.

Law enforcement takes a reactive role in most use-of-force incidents where the subject has an opportunity to comply but chooses otherwise. Use-of-force incidents are compounded exponentially when you account for any mental health issues and substance abuse dependency plaguing our communities. The creation and deployment of our Mobile Outreach Safety Team, crisis intervention team officers, Overdose Detection Mapping Application Program, spike alerts and evidence-based practices drive programs that direct law enforcement efforts to be more effective and efficient in their response. Currently, the WCSO completes over 23 hours of in-person annual training and an additional 26.5 hours of virtual interactive and online training minimally. We follow legislative mandates, POST-recommendations and directives by agencies. Our recently completed community survey was overwhelmingly positive, but we have identified room for improvement. Sheriff Darin Balaam will champion those recommendations with his executive team to ensure we are listening to the community we serve. We are happy to represent northern Nevada law enforcement and appreciate the overwhelming support we have of our community. We are proud to serve you. We are committed to community.

We encourage your support of S.B. 212 as amended.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):

We are in support of S.B. 212 as amended. Because of this cooperative deliberation and the resulting amendment, we are able to arrive in a supportive position.

I need to be clear that the Nevada Sheriffs' and Chiefs' Association (NSCA) does not agree that many of the inflammatory points made in Senator Harris's presentation and most expressly defy errant data presented to this Committee from <<https://mappingpoliceviolence.org>>. You can go to that website and look at the flawed methodology. It considers death at the hands of an off-duty officer in the data. If a father who is an off-duty cop hears his child scream for help in the middle of the night in the next room, rushes in to find a person who has broken in his home and is in the process of raping his daughter, and this father strikes the person to stop the assault, but the attacker dies—this is considered killing and would be entered into the Mapping Police Violence

database as an unarmed civilian killed by police. That is absurd. The data is flawed based on its own methodology.

On another matter, modern law enforcement worldwide has done away with this 1970s use-of-force continuum or a stair-stepping method of considering force you have heard here today as it increases the potential for excessive use of force or an improper stepping-down from force. Law enforcement finds that proper training in a use-of-force, decision-making process coupled with de-escalation training in an effort to reduce use-of-force incidences is the optimal way to train officers in the application of force, not a use-of-force continuum.

For section 3 of the bill, NSCA did query the sheriffs and chiefs of police on use-of-force data collection and reporting to the FBI. We found that 63 percent of those who responded to the survey do not report to the national use-of-force data collection. However, 53 percent report doing so, and 36 percent are neutral on the idea that section 3 is doable for our members.

We support S.B. 212 because Nevada law enforcement can comply with the provisions of the amended language and because Senator Harris has worked very well with us to arrive at this amended language. We do not support the presentation or appreciate the guest presenters and their hatred for police, but we do support Senator Harris on the bill.

LESLIE TURNER:

Thank you, Senator Harris, for bringing this bill forward and addressing the police violence I have seen my entire life in our communities. Simply because taking a life can fit into the framework of policy does not justify it in the broader society. We have to move toward making sure that we always put human lives at the forefront. When a person dies at the hands of law enforcement, we should look in depth to what happened and objectively try to prevent it from happening in the future. I have watched bodycam footage and listened to recorded cell phone calls of numerous people being killed by law enforcement. When we watch and listen to this, it should not be through the lens of figuring out whether the loss of life was justified within policy. Rather, we should be looking at what could have been done differently to preserve life. A life lost is a failure.

Someone on the Committee said the police keep us safe. That subjective statement erases the experiences of Black people and documented people; when people in my community see the police approaching, they do not feel safe. We feel the opposite. Maybe your neighborhood feels safe, but policy also needs to represent our will. Individual officers who want to do the right thing are not the issue nor are we debating how many Black people have been killed. It is sickening that we throw out an arbitrary "four of them were Black" because their lives matter. This is about systemic racism engrained in the fabric of this Country and in the system of policing.

A lot of data and information written on these topics can be used to educate ourselves. When it comes to data, we need to stop using worst case scenarios and listen to what is happening to people on the ground, in overpoliced communities and our neighborhoods.

Calling out injustice is not hatred. The communities that live these policies every single day are policed, our voices are valid, and we are experts on the things that have happened to our families and loved ones. The community needs to define what keeps us safe, not law enforcement.

CHAIR SCHEIBLE:

I am rescheduling the S.B. 258 hearing to another day. We will move on to opposition testimony on S.B. 212. Each caller will be given two minutes to speak.

SENATE BILL 258: Makes various changes relating to corrections. (BDR 16-825)

JOHN ABEL (Las Vegas Police Protective Association):

I am with the Las Vegas Police Protective Association (LVPPA), representing 3,500 law enforcement officers in southern Nevada as well as the Public Safety Alliance of Nevada, representing law enforcement officers in southern and northern Nevada. We represent the officers who use this use-of-force model. The decision to use force is never an easy decision for an officer. However, as part of our profession is already heavily regulated, attempting to regulate it further with subjective language will cause confusion and cause peace officers to be possibly injured or killed.

The concerns of the LVPPA and its 3,500 representative law enforcement professionals are with sections 2 and 3. Section 2 talks about training as it

relates to use of force and use-of-force policy and training under subsection 3. The LVPPA would welcome the following: "Each law enforcement agency shall adopt a written policy and provide training to a peace officer regarding the potential threat of serious bodily harm or death to the peace officer or others." The LVPPA objects to section 2, subsection 3, paragraph (b), subparagraphs (1) through (7). We ask for the removal of these areas because training that identifies a subcategory of those who do not pose a threat to an officer does not need to be addressed to mandate a policy in this section on best practices. Every time an officer uses force, whether it be low level or deadly force, many factors go through an officer's head. Those factors include making an assessment of the threat itself to include subject ability.

The LVPPA policy relates to four factors: ability, someone's ability to do harm to another; opportunity—typically close-in link to proximity, am I close enough to harm you, can I harm you; imminent jeopardy, deadly force and jeopardy for nondeadly force, a reasonable fear that something will happen or is about to happen; conclusion—if all reasonable options have failed and would have failed. These four cornerstones of force cover a wide range of avenues for using force. There is no need to outline what training should encompass. That should be decided by the agencies as long as they connect the four cornerstones of force.

Section 3 indicates the number of police complaints as well as substantiated complaints of force will be collected. In addition, officers must retain the ability to use nondeadly tools to disburse crowds.

RONALD DREHER (Reno Police Protective Association; Public Safety Alliance of Nevada):

I appear today to ask that this Committee oppose S.B. 212. I am here as an honorably retired Reno police officer and major crimes detective on behalf of the Reno Police Protective Association, Public Safety Alliance of Nevada, our families and victims of crimes in our State.

Police do not use force based on race. Police use force based on the actions of the person they are dealing with. Peace officers follow the use-of-force policies when dealing with the public. Officers are well-trained and employ the use-of-force continuums to guide them. No officer goes to work hoping to hurt someone; all officers go to work hoping to save someone. When an officer is required by the situation to use force, he or she does so only to the level necessary to control the situation. Codifying the use-of-force provisions as

described in S.B. 212 remains part of all the policies and procedures of our law enforcement departments in Nevada. We continue to utilize an escalation-of-force policy. Contrary to what has been said today in this Committee, we are not racist. The police use force when required. What requires and dictates the use of force depends on the situation the officer is dealing with.

What is not in our policies and procedures are those provisions in section 2, subsection 3 because these provisions place huge obstacles on police officers when encountering suspects and crimes. How do you codify subjectivity? How do you codify people's ages, if they are physically frail, their mental condition or if women are pregnant? The ambiguity in section 2, subsection 1 requires the officers must use the de-escalation technique whenever possible. Officers already do this—situations turn deadly in an instant. Our training teaches us to react immediately to a deadly situation, and that deadly situation can occur in an instant. To state in section 2, subsection 1, paragraph (b) to use force as objectively reasonable—how do we codify that? If we handcuff our police officers and not allow them to serve and protect, this bill will result in an officer or a member of the public being hurt or killed. Our peace officers need to have the authority to do their jobs. Look at Colorado; Reno; Las Vegas; Washington, D.C. We do not need to die at the hands of our peace officers by restricting their ability to do their jobs.

CALLI WILSEY (City of Reno):

While we are here in opposition, we have not had an opportunity to review the amendment in advance of today's hearing, but we look forward to doing so.

We have reached out to the sponsor, hoping to take part in the conversations on this bill going forward along with the other law enforcement agencies that spoke today.

I did want to clarify for the record some information regarding the Reno Police Department's use-of-force policy and the data provided by presenters. Our use-of-force policy has a use-of-force continuum, addresses de-escalation and includes comprehensive reporting. Additionally, it prohibits techniques that restrict a person's airway or ability to breathe. It requires a warning before using deadly force. Officers are required to intervene in excessive force situations. The policy also prohibits shooting at vehicles as well as additional details discussed today.

We take exception to the data presented. Since 2016, we have had one officer-involved shooting in which a Black male was killed. The data presented today is a misleading representation of what is happening in our Reno communities. We understand the importance of this conversation and value having more discussions, not only with State Legislators but with our communities as well.

Our police department has shown a strong commitment to proactively and openly work with our communities, to address community concerns and to update policies accordingly. We remain committed to this.

The bill sponsor mentioned anticipation of additional conversations, and we hope that we will be invited to participate in those conversations. We will also be submitting a letter with additional details about the Reno Police Department's use-of-force policy to the Committee.

TROYCE KRUMME (Las Vegas Metro Police Managers and Supervisors Association):

I am the vice chairman of the Las Vegas Metro Police Managers and Supervisors Association and a member of the Public Safety Alliance of Nevada, representing numerous police associations and having membership of over 10,000 peace officers across our State. I am also willing to make myself available to any member of the Committee on this important issue and be included as a stakeholder.

I testify in opposition to S.B. 212. The purpose of a lawful use of force is to use a reasonable level of force to overcome resistance to bring a person into custody. I would encourage that this language appear in the bill should it move forward.

In section 4, subsection 3, paragraph (c) of the amendment, [Exhibit E](#), I suggest language to the effect of "when feasible." Sometimes the immediate need to use the restraint chair for the safety of the inmate and others can preclude the opportunity for prior notice to medical staff.

In section 4, subsection 3, paragraph (d) of the amendment, requiring a member of the medical staff to perform an evaluation prior to use of a restraint chair could unnecessarily place that medical staff member in physical danger.

Mandating the evaluation as soon as possible after the person is in the chair should suffice and is the safest way for everyone.

These particular words are not hyperbole as just two days ago in an Iowa detention facility, a correctional officer and nurse were murdered by an inmate while in the prison infirmary. Safety to all persons, officers, jail persons, nurses and civilian staff should all be prioritized when assessing legislation such as this.

CHAIR SCHEIBLE:

The hearing on S.B. 212 is now closed. We can now move to public comment.

JASON GUINASSO (Police Officers Research Association of Nevada):

Please know that I attempted to speak in opposition of S.B. 212; however, I had technical difficulties and would like to get my testimony on the record during this public comment section.

The Police Officers Research Association of Nevada (PORAN) represents 14 Nevada law enforcement associations and more than 1,400 law enforcement personnel across the State. We oppose this legislation as written; however, PORAN does not oppose evidence-based police reform. We support evidence-based efforts to improve how police protect and serve our communities.

Unfortunately, some of the proposals in this legislation could change how police use of force is not supported by peer-reviewed evidence, data and the decade of experienced police professionals regarding best practices in policing. Rather, this proposed legislation is largely supported by a narrative of extreme and tragic incidents of a few bad actors for a narrative aggregated in a database. While narratives and narrative evidence are useful to help understand why the legislation might be needed, narratives do not supply evidence as to why the proposed changes to the law and policy will improve the work already being done by police to protect and serve our communities.

To our knowledge, there has been no effort by the bill sponsor or any of the supporters of the legislation to provide evidence supporting the assertion that the changes to the law will actually improve how police protect and serve our Nevada communities. The Senator referred to best practices, but best practices do not provide evidence that show that those proposals were in fact best practices.

By contrast, the statute and policy of the State and local levels regarding police use of force have been developed over the past 50 years based on evidence, data and experience of the law enforcement agencies. While there is always room to improve, we respectfully submit that the proposed changes to the law contained herein have not been subjected to the same evidence-based review and scrutiny supporting our laws and policies.

Our Association is willing to work with Senator Harris and others on evidence-based reform on police use of force. Unfortunately to date, the Senator has not invited the officers from our Association to have a seat at the table when drafting this legislation. Chair Scheible, I am sure that working together we can achieve the good intentions of Senator Harris and others who want to codify policing best practices and improve how police officers protect and serve our communities.

CHAIR SCHEIBLE:

I ask that the record reflect Mr. Guinasso's testimony in opposition to S.B. 212 was provided after we had closed the hearing on S.B. 212.

TENISHA FREEDOM:

I add neutral testimony in regard to S.B. 212 as I was also experiencing technical difficulties.

The use-of-force policy needs to be discussed, reviewed and revised, including accountability definition and consequence. People have been harmed and killed in these situations with the police. As one caller stated earlier, a death for any reason is a failure. I have witnessed this use of force myself during protests when another protestor was physically assaulted and restrained inhumanely in a restraint chair after refusing to put his hands in his mouth during the pandemic when officers were trying to see if anything was in the protestor's mouth. He requested gloves and hand sanitizer or to wash his own hands, but he was denied and then physically harmed.

I have also witnessed use of pepper gas and not being allowed to safely disperse during protests. I, too, have been harmed by excessive force in public while being held in various jails.

The language in some areas of the bill needs to be improved, especially in the sections that state "may" instead of "must" because this can be ambiguous.

We need to be more diligent with oversight on the use-of-force policies in this State. What we see across our State and cities is inconsistent. There are varying levels of policies with law enforcement agencies. This bill may attempt to provide some consistency in this way.

CHAIR SCHEIBLE:

I ask the record to reflect that Ms. Freedom's testimony in neutral to S.B. 212 was provided after we had closed the hearing on S.B. 212.

MS. GRANT:

My brother, Thomas Purdy, was hog-tied for 40-plus minutes by Reno police during a mental health crisis and then asphyxiated to death at the Washoe County Jail while still hog-tied. The officers who put my brother in the hobble torture device at the Peppermill Casino kept him facedown with a knee on his back and neck when hog-tied while they filled out the paperwork, never turning my brother over onto his side into a recovery position the entire time. I can provide the police reports. My brother never assaulted anyone. He was terrified out of his mind and thought that someone was trying to kill him. He asked for help, but no ambulance was ever called even after being put in the torture device for over 40 minutes. I cannot speak to Clark County, but I can speak to Washoe County. If someone were to die in Washoe County by means of asphyxiation, District Attorney Chris Hicks does not investigate like he does for an officer-involved shooting.

Until *Graham v. Connor*, 490 U.S. 386 (1989) and *Tennessee v. Garner*, 471 U.S. 1 (1985) are overturned, nothing will change. Watered-down bills are not designed to prosecute police but to restore public confidence in the police. They are used to defuse demand for prosecuting police brutality and minimize punishment for guilty cops. What families really want is true change so no other family knows this pain and for our loved ones' killers to be held accountable as anyone not wearing a badge would be. People who want accountability and transparency are automatically labeled cop haters. I do not hate cops; I dislike bad cops and those who cover up their wrongdoings.

Since the year 2000, six people who identified as Black have been killed during interactions with police in Reno. The last man killed in Lyon County on January 16, 2020, was 66 years old. His 13-year-old grandson was autistic and later shot by Salt Lake City Police Department on September 5, 2020.

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CHAIR SCHEIBLE:

This concludes our meeting. We are adjourned at 3:35 p.m.

RESPECTFULLY SUBMITTED:

Gina LaCascia,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 107	B	1	Patrick Guinan	Work Session Document
S.B. 212	C	1	Senator Dallas Harris	Presentation
S.B. 212	C	9	Senator Melanie Scheible	Presentation
S.B. 212	D	1	Katie Ryan / Campaign Zero	Research Basis for Restrictive Use of Force
S.B. 212	E	1	Senator Dallas Harris	Proposed Amendment