MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-Second Session
May 11, 2023

The Committee on Judiciary was called to order by Chair Brittney Miller at 8:08 a.m. on Thursday, May 11, 2023, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda [Exhibit A], the Attendance Roster [Exhibit B], and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Brittney Miller, Chair
Assemblywoman Elaine Marzola, Vice Chair
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Venicia Considine
Assemblywoman Danielle Gallant
Assemblyman Ken Gray
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Selena La Rue Hatch
Assemblywoman Erica Mosca
Assemblywoman Sabra Newby
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Toby Yurek

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Dallas Harris, Senate District No. 11
Senator Melanie Scheible, Senate District No. 9

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Devon Kajatt, Committee Manager
Aaron Klatt, Committee Secretary
Ashley Torres, Committee Assistant

OTHERS PRESENT:

Mackenzie Warren Kay, representing Real Property Law Section, State Bar of Nevada
Michael E. Buckley, Chair, Real Property Law Section, State Bar of Nevada
Jorja Powers, Policy Analyst, Department of Sentencing Policy
Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Branden Cunningham, Manager of Community Engagement, Nevada Coalition Against the Death Penalty
Mary Walker, representing Douglas County; Lyon County; and Storey County
Tom Clark, representing Nevada Judges of Limited Jurisdiction
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Jennifer Berthiaume, Government Affairs Manager, Nevada Association of Counties
Marcie E. Ryba, Executive Director, Department of Indigent Defense Services

Chair Miller:
[Roll was called. Committee rules and protocols were explained.] Good morning, everyone. Welcome to Assembly Judiciary. Today, we do have three bills and one work session. We will begin with the work session. Ms. Thornton, please walk us through the work session for Assembly Bill 404.

Assembly Bill 404: Revises provisions governing civil actions against a provider of health care for professional negligence. (BDR 3-709)

Diane C. Thornton, Committee Policy Analyst:
Assembly Bill 404 revises provisions governing civil actions against a provider of health care for professional negligence. The bill was sponsored by this Committee, and heard on May 9, 2023 [Exhibit C]. There are no amendments to this measure.

Chair Miller:
Members, are there any questions on the measure? Not seeing any, I will entertain a motion to do pass Assembly Bill 404.

ASSEMBLYWOMAN MARZOLA MADE A MOTION TO DO PASS ASSEMBLY BILL 404.

ASSEMBLYWOMAN CONSIDINE SECONDED THE MOTION.

Are there any comments on the motion? [There were none.]

THE MOTION PASSED. (ASSEMBLYMEN BILBRAY-AXELROD, GALLANT, GRAY, HANSEN, HARDY, AND YUREK VOTED NO.)

I will go ahead and take the floor statement.

That closes our work session. We will go ahead and start with our first bill scheduled today, which is Senate Bill 223, sponsored by Senator Harris and copresented by Mackenzie Warren Kay and Michael Buckley. Senator, your hearing is open. You may proceed once you all get settled in, and I know that the other two presenters are down there in Las Vegas.

Senate Bill 223: Revises provisions relating to real property. (BDR 2-657)

Senator Dallas Harris, Senate District No. 11:
Senate Bill 223 is a bill that this Committee has probably seen in its previous iterations. The Real Property Law Section (Section) of the Nevada State Bar brings a bill every session to perpetually clean up our property laws, and that is what you have before you today. I will readily admit that this is not my area of expertise, and I am lucky to have Ms. Warren Kay, as well as Mr. Buckley in Las Vegas to take all the fire from you today. I will, with your permission, Madam Chair, turn it over to Ms. Warren Kay and Mr. Buckley to walk us through the bill.

Mackenzie Warren Kay, representing Real Property Law Section, State Bar of Nevada:
We want to acknowledge the Chair for scheduling Senate Bill 223, and we also want to recognize our sponsor, Senator Harris. As you heard from Senator Harris, the Real Property Law Section does the routine maintenance on the corresponding parts of the *Nevada Revised Statutes* (NRS). The Section is composed of real estate practitioners who are interfacing with these chapters and these laws in their daily legal practice. The Section is composed of northern and southern Nevada members, and over the course of the interim they talk about what needs to be updated. Maybe it is a reference in NRS that is simply outdated, or sometimes it makes sense to rehouse things in a more appropriate chapter that is more germane to the topic at hand. In other instances, it is finding efficiencies in the practice or to make sure that the law is capturing what they are seeing in their everyday legal practice.

We have also posted a summary memo [Exhibit D] to the Nevada Electronic Legislative Information System (NELIS) that breaks down S.B. 223 quite nicely. With that, Chair Miller, with your permission, I will send it over to Mr. Buckley to walk members through the technical aspects of the bill.

Michael E. Buckley, Chair, Real Property Law Section, State Bar of Nevada:
The basis for our bill has been well explained, and I will now walk you through the bill. In sections 1 through 4, we are slightly tweaking the language dealing with the recording of a *lis pendens*. We are changing the words from recording the *lis pendens* in "the" county in which the property or some part is located, to "each" county in which the property or some part is located. We think that is a clearer requirement that the *lis pendens* be recorded in every county where the real property is located. Again, that is sections 1 through 4.

Section 5 is an amendment to NRS 40.255 which deals with eviction proceedings. However, subsections 2 and 3 of this statute have nothing to do with proceedings; they deal with the relationship between the landlord and the tenant after foreclosure. Section 5 would delete these two subsections from NRS 40.255, and section 14 will move them into NRS Chapter 118A, which deals with the relationship between the landlord and the tenant. There is no substantive change; it is just moving it out of the preceding section into the landlord-tenant relationship chapter.

Section 6 is an amendment to NRS 40.504. There are a number of sections in this area that deal with what happens if a lender's mortgage property is contaminated, and this section is the definition of "hazardous substance." It includes a reference to the "Uniform Fire Code (1988 edition)," which no longer exists; therefore, the proposed amendment would delete that reference to the Uniform Fire Code.

Section 7 is an amendment to NRS 106.220. We had an amendment to this section approved in 2021, which we thought fixed the issue here, but it did not quite do it. The statute requires documents relating to the subordination of a deed of trust or mortgage to be recorded. Almost all leases—shopping center leases, office building leases, et cetera—have a clause in there that subordinates the tenant's interest to the landlord's mortgage on the whole property, and there were some people who believed that the way the language reads now, it would require the lease to be recorded, but that was not the intent. The background of this statute dealt with the problems with fraudulent foreclosures in the recession; therefore, we are cleaning up this language to make it clear that the only documents that need to be recorded are those that subordinate or give priority to another deed of trust and that those need to be recorded.

Section 8 is an amendment to NRS 107.015. In 2019 our proposal took several of the definitions that were scattered throughout NRS Chapter 107 and put them in NRS 107.015 for the purpose of having all the definitions in one place. Unfortunately, the definition of "surety" and "surety bond" in NRS 107.079 were moved also, and the word surety is used in another statute that has a different meaning. Therefore, sections 8 and 9 would take the definition of "surety" and "surety bond" out of the general definition section and put them back where they were before they were moved.

Sections 10, 11, 12 and 13 are the same as sections 1 through 4 where we are just changing the language to make it clear that a document that relates to foreclosure needs to be recorded in each county where the property or any part is located. Section 15 is an amendment to the

landlord-tenant law. There is an existing exemption from the requirements in NRS Chapter 118A for a lease with the purchaser of real property. Our proposal would be an exemption for the lease by the seller of the property. In other words, when the close of escrow comes and the seller wants to stay in the property for some period of time after the closing, that is part of the deal. This section would permit that, and, of course, it is permitted already, but it would mean that relationship would not fall into the formal requirements of NRS Chapter 118A.

Section 16 is related to a few statutes in NRS Chapter 645 which deal with the broker's claim to a commission on the sale of commercial property. If there is a dispute and the owner does not pay the broker, the broker has a lien on the seller's sale proceeds in escrow. The escrow agent already has the ability, if it receives notice of a claim by a broker, to put those monies into court. This amendment clarifies that once the escrow agent puts those monies in court, then the broker must go into court and the escrow agent is relieved from the dispute between the seller and the broker. With that, I would be happy to answer any questions.

Assemblywoman Gallant:
I know we met yesterday, but as I am hearing you present today, a new question has come to mind. I am curious how the following situation would work. We have some rural lands which are in multiple counties. I have no idea how far the county recorder is from these various locations, but I am curious; do you have any detailed knowledge on how the process of the sale, in terms of the seller and escrow, is all going to work? Obviously, it is going to be an added cost if they must record in multiple locations, and I am concerned that there could possibly be several hours' worth of driving to get from one recorder to the next.

Michael Buckley:
I think the language already requires the documents to be recorded in every county where any part of the property is. A careful practitioner, a title company, escrow agent, attorney, or real estate broker would make sure that the document is recorded wherever the property is. Therefore, I think it is already there. More importantly, if you have real estate, it is important that the record of ownership of that real estate be of record in every county where the property is located. If it is not, then there could be claims against the property or the ownership interest might be unperfected in the property if it was not recorded in every county where the property is.

To answer your question: number one, I think it is already probably required; number two, I think a careful practitioner would, out of an abundance of caution or prudence, record in every county where any part of the property is located. Furthermore, Assemblywoman, I do not know about the other counties, but certainly in Clark County, they have electronic recording. I suspect that in many counties that may be the case as well; therefore, you are probably not going to need to get in your car and drive into the recorder's office anymore.

Assemblywoman Considine:
I think this is a comparatively simple cleanup bill. The one comment or question that I have is on section 10, subsection 4, paragraph (c), regarding the publishing requirement. From my

understanding some counties currently do not have a newspaper of general circulation that is printed once a week, and I do not know if that is going to cause issues in meeting this requirement. I know that this is not necessarily part of what you have changed, but I wanted to bring it up. I know the Section meets periodically to go over this language, so I just wanted to bring that point up. First, newspapers are generally going away, but secondly, from what I understand, in some of the rural counties, they are not being printed weekly.

Michael Buckley:
I agree. I think we are getting away from publishing in newspapers. We would certainly be willing, our Section and our executive committee, to look at that, and I am sure, to many practitioners, that would make sense. We see it in different NRS chapters where notices are being done through electronic means, and in fact, I am sure it is a problem in places where you might not be able to find a newspaper that does that. Therefore, that type of change makes sense to us, and we would certainly support it.

Chair Miller:
With that, I do not see any additional questions, so we are going to open it up for testimony. Is there anyone wishing to testify in support of Senate Bill 223? [There was no one.] Then I will go ahead and open it up for testimony in opposition of Senate Bill 223. [There was none.] Is there anyone who would like to provide neutral testimony to Senate Bill 223? [There was no one.] Then I will go ahead and close testimony and welcome the bill sponsor back up for any final remarks.

Senator Harris:
I just wanted to thank the Committee for its time and a couple of diligent questions. I look forward to seeing you all in a few days.

Chair Miller:
With that, I will go ahead and close the hearing on Senate Bill 223. Next, I am going to go ahead and take the bills out of order; therefore, the next bill will be Senate Bill 316 (1st Reprint). Senate Bill 316 (1st Reprint) is sponsored by Senator Scheible. With that, the bill hearing is officially open. It is also copresented with Ms. Jorja Powers. Please proceed when you are ready.

Senate Bill 316 (1st Reprint): Makes various changes relating to criminal law. (BDR 14-132)

Senator Melanie Scheible, Senate District No. 9:
Senate Bill 316 (1st Reprint) makes a small change to the part of the *Nevada Revised Statutes* that requires reporting for all open murder and voluntary manslaughter cases from every prosecuting agency in the state. This provision was first put into place back in 2003, and at that time, there was never a requirement in law that the reports include the name and case number for the individual cases. Having reviewed the legislative history, I cannot find any reason for that. Either it was assumed that people would include them in the reports, or it was simply an oversight.

Here we are 20 years later, and prosecutor's offices are creating and submitting these reports to the Office of the Attorney General, but they come in aggregate form. For a jurisdiction such as Washoe County, for example, they might report that they have prosecuted 50 open murder cases that year, and they might also be able to report that 30 of the defendants were men and 25 of the victims were women. However, that does not tell you how many cases where that involved a man killing a woman because you cannot connect the victims, the defendants, and the cases to one another. This bill simply adds the name and case number for the defendant to the report that is submitted by each prosecuting attorney's office. All this information is already public record, and there actually have been organizations that have tried to match up the numbers with the publicly available data on the cases. It is simply a bad use of time when the information is publicly available and could have been provided all together at one time.

The other change that the bill makes is, it changes the responsibility of receiving, collecting, and analyzing these reports from the Office of the Attorney General to the Nevada Department of Sentencing Policy (NDSP). This is because when we passed the bill in 2003, there was not a Department of Sentencing Policy, but now it exists for exactly this purpose: to aggregate data from all our jurisdictions about crimes we are prosecuting and people we are sentencing to better understand trends and make data-informed decisions moving forward. That is why Ms. Powers is with me; she is a representative of NDSP, whom I hope you have already heard from this session because they do fantastic work in the state of Nevada, are absolutely nonpartisan, and provide us with important data, data which tracks the crimes we are investigating and prosecuting, as well as the people who we are sentencing here in the state of Nevada, in an effort to make better decisions as policy makers. At this time, I want to briefly turn it over to Ms. Powers to talk about NDSP's ability and willingness to process this data and the advantage of having them do that.

Jorja Powers, Policy Analyst, Department of Sentencing Policy:
I would like to assure you that NDSP is prepared to receive and maintain the expanded data points required in S.B. 316 (R1) beyond the aggregate information currently being reported regarding murder and voluntary manslaughter charges filed in Nevada. The Department of Sentencing Policy exists to collect and analyze Nevada criminal justice data and to facilitate analysis and availability of the information to allow for data-driven policy decisions. As we are currently doing with prison data, NDSP can produce straightforward, useful, nonpartisan visuals and reports on trends the data shows regarding these records.

Senator Scheible:
We are available for any questions you may have.

Assemblywoman Mosca:
I do not see anywhere here about zip code, where the person lives, or where it happened. Does that come somewhere else?

Senator Scheible:
That was not included in the original bill. I think by utilizing the case number and the court's location, that would give you a pretty good idea of the jurisdiction, but it would not be as specific as zip codes.

Assemblywoman Summers-Armstrong:
I am glad to see NDSP in this Committee again, and I am excited about your being prepared to collect this data and give us further clarity. I would like to follow up on the question from Assemblywoman Mosca; is there any reason that we could not include the zip code so that we have better data points? Is there any prohibition from collecting that data, and would you be willing to add that?

Senator Scheible:
I am certainly willing to open a conversation, but I have not had that conversation with the stakeholders. I can imagine there may be some difficulty in determining whether we are going to utilize the zip code where the incident occurred, where the defendant lived, or where the victim lived. We would have to discuss which one of those we wanted to use and whether those are going to be retained over time; but I am certainly open to it.

Assemblywoman Summers-Armstrong:
I think it could be important to gather the data where it happened because we know it affects the perception and insurance rates of communities, depending upon where these things happen. Furthermore, that kind of data could either confirm or disabuse those perceptions if we were more accurate.

Chair Miller:
What would be the purpose of having the person's name that was charged?

Senator Scheible:
That information is already publicly available, and so being able to connect the name with the case data would enable us to disaggregate the information. For example, in a case where you have a jurisdiction that has multiple cases, you would be able to divide them into which data point goes with which case. That way you could see things such as, was the gender of the defendant and the victim the same; whereas, if you do not have the name of the person, you cannot necessarily connect it to that case.

Chair Miller:
It looks like gender is already required, and we know that names do not actually clarify gender, so how would that information be used?

Senator Scheible:
The purpose of having the name is to identify a particular person in a particular case. It is also important to recognize that as a person is prosecuted in an open murder case, they are going to go through a couple of different case numbers; therefore, while the case number is very helpful, it is not dispositive to be able to say this one particular incident is only

associated with this one case number. By having the name, if I see that John Doe is associated with case No. C12345 and that was a case where a person of this race was killed by a person of this race, by a person of this age, or with a victim of this age, for example; then I see the same John Doe with a different case number, I can compare the two data sets. I can discover whether it is the same case, simply an appeal, the civil portion of the case, or that it was the writ of habeas corpus that was assigned a new case number. That way, I can tell in that jurisdiction how many different cases there were and utilize data which is already being collected. However, without the name and only the case number, you could still have repetition of the same incident.

Chair Miller:
With that, I do not see any additional questions. I will open it up for testimony in support of Senate Bill 316 (1st Reprint).

Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office:
I am here testifying in support. This bill is very basic, but it means a lot. It will mean a lot to the state, and it will allow more data-driven decisions from this body moving forward. Therefore, we support the bill.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I echo the comments of Ms. Roth. Having data and moving forward in a data-driven manner is going to move our state forward in the right direction. For a long time, we were like an airplane flying with no controls, just guesstimating what was happening. The Nevada Sentencing Commission is a great boon to the state. They are doing great work. It is helping to inform where we are at with policy, and Executive Director Gonzalez can say either no, the data does not show that, or yes, the data does, and we should change direction. This is one of those bills that will put us in a better position.

Branden Cunningham, Manager of Community Engagement, Nevada Coalition Against the Death Penalty:
We are in support of S.B. 316 (R1). We are excited to see this small piece of legislation go a long way to making an existing report more useful in helping community advocates see trends in our larger criminal justice system, and we echo what other testimony has been said here today.

[Exhibit E was submitted in support of S.B. 316 (R1) but was not discussed. It will become a part of the record.]

Chair Miller:
I will now open it up for opposition testimony. Is there anyone wishing to oppose Senate Bill 316 (1st Reprint)? [There was no one.] Then I will open it up for neutral

testimony. [There was none.] I will go ahead and close testimony and welcome the bill sponsor up for any final remarks. There are no final remarks. With that, I will go ahead and close the hearing on Senate Bill 316 (1st Reprint).

Next, we are going to add something to the agenda. We actually have a bill draft request (BDR) introduction. Members, we are going to introduce BDR 1-900.

Again, just a reminder because it has been a while since we have done this, a vote today is just a vote to have the BDR introduced so that it becomes a bill and can go through the process. It is not in any way identifying any type of support for the measure. With that, I will entertain a motion to introduce BDR 1-900.

BDR 1-900—Revises various provisions relating to background checks. (Later introduced as Assembly Bill 503.)

ASSEMBLYWOMAN MARZOLA MOVED TO INTRODUCE BILL DRAFT REQUEST 1-900.

ASSEMBLYWOMAN SUMMERS-ARMSTRONG SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Hansen:
I am familiar with the process, but I was just curious, could you hold up that BDR so we can see how thick it is?

Chair Miller:
Everyone got that. Again, we are just voting to turn it into a bill.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Gray:
I was just wondering why this was not introduced earlier, especially such a big one. The timing of this introduction is new to me.

Chair Miller:
Regarding the process and procedure, we will have Legal Counsel respond to you for that.

Bradley A. Wilkinson, Committee Counsel:
This is actually a Legislative Counsel Bureau request from my office that is exempt from all deadlines. Basically, the bill fixes all the fingerprinting statutes within NRS that the Federal Bureau of Investigation has rejected in the past 20 years, which is the last time we did a similar bill.

Chair Miller:
For clarity on the process, this probably will not be the last BDR introduction we have because there are both emergency measures and things that are exempt. Therefore, it is quite possible we will see more BDR introductions.

With that, we will continue our agenda and move on to our last bill of the day. Members, I want to make sure everyone has the amendment [Exhibit F] that was submitted last night. I know there was not much time to review it, but I believe it is on your desk. With that, I will open up the hearing for Senate Bill 235 (1st Reprint). Senate Bill 235 (1st Reprint) is sponsored by the Judiciary Committee on behalf of the Joint Interim Standing Committee on Judiciary, and it is presented by Senator Scheible and Ms. Mary Walker. When you are ready, please proceed.

Senate Bill 235 (1st Reprint): Revises provisions relating to pretrial release. (BDR 14-310)

Senator Melanie Scheible, Senate District No. 9:
I am happy to be in front of the Assembly Judiciary Committee this morning talking about Senate Bill 235 (1st Reprint). Senate Bill 235 (1st Reprint) is a little longer than the last bill that I presented to you, but it makes some very important changes and clarifications in law for what we have been calling the "48-hour hearings." I do not want to bore you or repeat well-established information at this point, but I do want to give this Committee a little history to be sure we are all on the same page.

Back in 2020, the Nevada Supreme Court ruled in the *Valdez-Jimenez v. Eighth Judicial District Court* case that anyone who was detained or arrested was entitled to a bail hearing in a reasonable amount of time, without actually defining what a "reasonable" amount of time is. Thus, in the 2021 Session, we undertook as a body the creation of a series of laws that would protect a person's right to have a timely bail hearing and then have the bail or conditions set in the least restrictive manner possible to ensure the defendants return to court, as well as the safety of the community. In that process, we as a body determined we had to pick a number of hours, and we settled on the number 48. This decision was based on data from other states, practices in the state of Nevada, and long conversations with stakeholders. We decided that every person in Nevada would be statutorily entitled to a bail hearing within 48 hours of being taken into custody.

Between 2021 and today, we have had all jurisdictions in Nevada start to implement this law. As expected, there have been some challenges, and S.B. 235 (R1) is designed to address those challenges. I know many of you sat on the Joint Interim Standing Committee on Judiciary where we heard from various jurisdictions in the state that had varying challenges in implementing this rule. One thing that I want to make very clear is that we did not extend the original time period. Senate Bill 235 (1st Reprint) still requires everybody to get a hearing within 48 hours.

I will now walk you through the bill and the changes it makes to help alleviate some of the concerns of our partners throughout the state. You might remember some of the more memorable testimony from some jurisdictions about the challenges they faced in utilizing remote technology, as well as the challenges they faced with staffing. With that, I appreciate you all looking at the amendment [Exhibit F], even though it was submitted late. I have been working diligently with the stakeholders up until the eleventh hour, and Ms. Walker actually deserves the lion's share of the credit because she did the lion's share of the work to get us to a place where everybody could agree. That includes the Nevada District Attorneys Association, the public defenders, the Nevada Judges of Limited Jurisdiction, and the senators who worked on this bill. She was able to get them to agree on the provisions contained in the amended version of S.B. 235 (R1).

The big difference that this amendment makes is, it includes an allocation of $1.2 million from the General Fund to pay the district attorneys, public defenders, and judges who are being asked to come in on weekends and holidays to hear these cases [page 5, Exhibit F]. The primary reason we are doing that is not to pay the judges, district attorneys, and public defenders who already do this as part of their job, but because in a small jurisdiction, for example, where you have one judge who sits as both the justice of the peace and as the municipal court judge, if they cannot have somebody else come in and cover for them, they will never get a weekend off. Furthermore, as it turns out, there are not a lot of judges in Nevada who will sit for another justice of the peace without getting paid to do so. Therefore, the purpose of S.B. 235 (R1) is to give each county a certain budget that they can utilize to pay a pro tem judge, senior judge, or another part-time judge to hear those cases; not every single time, not every single weekend, but to provide relief for those judges, district attorneys, and public defenders who are already working evenings, weekends, and other times outside of their normal Monday through Friday schedule.

Again, that is why I brought Ms. Walker here because she is the one who helped develop the system you will see laid out in S.B. 235 (R1) for accounting that money, as well as the calculations for how much each county would need. However, before I turn it over to her, I do want to walk through the amended version of the bill to make sure I can answer potential questions you may have about the provisions because, at this point, there are many of them. We started out with only a few and then over the course of this session, we came to agreements in other areas where we could make changes that would help every jurisdiction in Nevada to hear pretrial release hearings within 48 hours.

Section 1 does two things. Section 1 clarifies the continuance of a 48-hour hearing. It clarifies it can be continued for good cause, and that good cause can be at the court's own motion. For example, if a judge cannot make it to court, sees that the jail is on lockdown, and therefore cannot transport people who are in custody, or other things of that nature, the judge can him or herself declare good cause and continue the hearing. It also allows either the prosecutor or the defendant to move to continue for a good cause, which could be in a situation where the prosecutor has not had time to contact the victim, the defense counsel has not had time to talk to their client, or the case is especially complex and they do not have

time to do the necessary research to make a cogent argument about their client's release. Therefore, section 1 clarifies that any of those three parties can allege the good cause and the judge can grant continuance.

Section 1, subsection 3 also clarifies that the parties can stipulate to a continuance, which is quite common, especially in category A felony cases. With sexual assaults, murders, and other serious matters, you will see that neither the prosecutor nor the defense attorney wants to come in two days after somebody has been arrested and argue bail on a case where they could potentially be talking about millions of dollars, house arrest, or other serious consequences. Both parties will usually want a week or two to be able to talk to the other people involved in the case. As a defense attorney myself, I would want to talk to my client's family, find out what kind of financial resources they have, and gain more information before moving forward. Therefore, both parties can stipulate they are going to continue the hearing, and we specifically outlined that a continuance can be done by electronic mail or the Internet and does not have to be a formal motion filed with the court. For example, if Ms. Walker and I work in the same small jurisdiction where she is the prosecutor and I am the defense attorney, we can talk on the phone and say, Hey, I am not going to be ready for a bail hearing on Monday. Are you good with Tuesday the 14th? She could agree and we would email the judge and ask, We had a chance to chat, could we please put our bail hearing on Tuesday the 14th?

Section 4 relates back to section 1, which I now see has an error in it. We have discussed amending the provisions of section 1 to allow for the 48 hours to start at the time of booking unless, for some reason, more than eight hours passes between arrest and booking, which I know sounds complicated. It took a while for us to get to this place but here is the reason for it; for most jurisdictions the time of booking is much easier to calculate. It is a time stamp of when the person enters the jail, it is easy to refer to, and generally, booking comes shortly after somebody has been taken into custody. Calculating the time somebody was taken into custody has turned out to be administratively onerous without having a big advantage to defendants because most people are being brought to their hearing within 48 hours; many of them are being brought to their hearing in even less time, often within 24 or 16 hours. All the stakeholders agreed that going from booking to 48 hours would not substantially change the rights of the defendant.

We also discussed the possibility there could be an outlying case where an offensive amount of time occurs between the time somebody was arrested and the time that they were booked. We do not want to open the opportunity for bad actors to abuse the change and keep people in custody for long periods of time before they are booked. Therefore, we talked to our partners—especially in rural jurisdictions where they do have to drive significant distances—and decided there is really no reason anybody should spend more than eight hours in custody before they are booked.

Generally, we do not think there are going to be significant problems with this issue. However, if I am the public defender out in a particular jurisdiction and I have a client who comes to a hearing on a Monday morning who says, Well, I was taken into custody on

Thursday, and then we look back at the records that show he was not arrested or booked until Friday afternoon, subsection 4 then comes into play. That gives me the statutory authority to go to the court and say my client was entitled to a hearing earlier than today, and all the attendant remedies would then follow. It would be retrospective in many cases, but the purpose of subsection 4 is to ensure that if there is a pattern of abuse, we are able to catch it. Furthermore, for any individual who is held for more than eight hours before they are booked and it affects their ability to have a hearing within 48 hours, we do want to have a remedy.

Another example is you can catch it in the middle of that process. If my client is arrested and calls me on a Tuesday morning, and I tell him he has not been scheduled for a pretrial hearing and ask him when he was first brought into custody and he tells me Sunday night, then I would be able to contact the court and say, Hey, we are coming up on 48 hours of my client being taken into custody. Even though he was not booked for 10 hours, he is still entitled to his hearing that afternoon. That is of course if I wanted a hearing that afternoon, which again, goes back to subsection 3. If my client was in custody for nine hours before being booked, it is probably on an incredibly serious charge, and I may not want my hearing in 48 hours. I am sure there will be questions on that section, but I wanted to lay it out for you before happily addressing your specific questions.

Section 1, subsection 6 clarifies that anybody can appear by remote appearance. They are already allowed to do that, but some jurisdictions did not feel the language was strong enough, and they were, I think the legal term is, nervous about doing it. Therefore, we wanted to make sure that everybody was empowered to utilize the virtual technology available to them to conduct these hearings.

There are no changes to section 1.5 from the original bill, but I have copied section 1.5 into the amendment for ease of reading [pages 2-4, Exhibit F]. What section 1.5 does is clarify that if somebody is brought back into court after they have already been released pretrial, the court has the option to impose additional conditions before they are rereleased. What would this look like in practice? Let us say I have a client who was released without house arrest, but the order was, You cannot go back to the Tropicana Las Vegas because that is where this incident occurred. Then, say my client is found in the Tropicana Las Vegas and brought back into custody. The judge might not want to revoke bail and keep my client in custody; the judge might want to impose a new condition such as house arrest saying, We are going to let you out again, but this time you will be on an ankle monitor, and you are not going to be allowed to leave your house. Section 1.5 ensures that judges have that option when they are addressing a violation of a pre-custody release order.

The new section, section 3, is the money part [page 5, Exhibit F], and as I explained briefly at the beginning, I will soon let Ms. Walker walk us through those amounts in more detail, but the way we envision this working was developed through talks with the Department of Health and Human Services, the Department of Indigent Defense Services, and the Office of the State Controller. We think the most efficient way to do this would be to make those allocations in the statute, and then the Controller would deposit those amounts in the accounts of each of those counties. They would then be able to use that money to pay

a stipend of $450 per day to any judge, defense attorney, public defender, or prosecutor who works on a weekend or a holiday. They would have to account for that money and would then return anything in excess of what they were already given. There is no punishment the next year if the county returns money. They are also required in subsection 3 to provide a report to the Legislative Counsel Bureau to report to either the Joint Interim Committee on Judiciary or the Judiciary Committee, depending on the year, to allow legislators to see how much and when they are utilizing these funds, as well as who they are utilizing them for.

Section 4 is very long because I had to copy the entire statute, but the good part is on page 8 [Exhibit F]. Section 4, subsection 6 says that a justice of the peace and a municipal court judge may, if they both agree to it within their own jurisdiction, sit for each other during pretrial release hearings. I know of at least a couple of jurisdictions where one person sits as both the justice of the peace and the municipal court judge, and they cannot combine those calendars right now. What is happening is the same judge is sitting in front of the same prosecutor, the same defense attorney, and they are going through two or three pretrial release hearings before shutting down court and then reopening court because they are moving from the justice court calendar to the municipal court calendar. Similar to when we are in a joint session and we have to close the session to then go back to our own sessions, they are doing the same thing with their clerks, recorders, and marshals or bailiffs. Therefore, by allowing the justice of the peace or municipal court judge to hear cases for the other judge, that would allow them to have one calendar. If the justice of the peace has three justice court cases and one municipal court case scheduled that day for pretrial release hearings, they can add the municipal court hearing to their calendar and hear them all together. Furthermore, in jurisdictions where the justice of the peace and the municipal court judge agree to it, this would allow them to sit for each other. For example, it could be a municipal court judge hearing an entire justice court pretrial release hearing calendar; not the preliminary hearings nor the status checks, nothing except for the pretrial release hearings.

Section 5 basically does the same thing in the opposite direction. It allows the municipal court judge to sit for the justice of the peace [page 8, Exhibit F]. Thus, between sections 4 and 5, you get the cross ability to sit for one another between justice court and municipal court; however, all of that must be done pursuant to an interlocal agreement where both courts have to agree to it and put it in writing before that can happen.

Section 6 provides for something similar for district attorneys and would allow deputy district attorneys, especially in our rural communities, to be what we have termed "cross deputized" to represent another county in a pretrial release hearing. To give you an example, if I am the Nye County district attorney who has two deputy district attorneys, and the Lincoln County District Attorney's Office, that has zero deputy district attorneys, wants to borrow an attorney to do pretrial release hearings so the district attorney in Lincoln County can go on vacation or take a sick day, they can do that if they have agreed to do so in advance. It would allow the Lincoln County district attorney to deputize a Nye County deputy district attorney to go sit in Lincoln County and do the pretrial release hearings, as well as receive the $450 stipend. Back when I worked for the district attorney's office,

I certainly would not go to anybody else's jurisdiction just because they asked me to, but for $450, I might. Section 7 is the enabling language to allow a district attorney to accept that $450 stipend.

Section 8 is the equivalent for the public defenders, deputy public defenders, and appointed counsel. It did come to my attention that we will need an additional section 9 to cover the state public defenders, but it will be similar or the same language authorizing those individuals. Therefore, it could be either the public defender, the deputy or assistant public defender, contract counsel—somebody who is appointed to represent indigent clients in any jurisdiction—or the state public defender who can be called on Christmas if there are any pretrial release hearings, and they can earn their $450 to do so.

I think that covers the main sections of the bill. I would like to give Ms. Walker an opportunity to expand on how we got to section 3, or we can go straight to questions.

Chair Miller:
Ms. Walker, do you have anything to add?

Mary Walker, representing Douglas County; Lyon County; and Storey County:
I first wanted to thank Senators Scheible, Nguyen, and Harris, who have worked very hard, as well as sat down and met with us many times, and I really appreciate their dedication to try and resolve some of these problems. As Senator Scheible stated very accurately, the rural counties had a difficult time implementing A.B. 424 of the 81st Session, but the true burden of it was with the judges, district attorneys, and public defenders. They are in salaried positions who, all of a sudden, had to work weekends and holidays without getting additional compensation.

As you heard, this would provide them this stipend, and how we calculated it was by saying the time would be equal to three hours at $150 per hour, giving them the $450. It can be utilized by existing judges who have to work extra or by other folks who are brought in. I have one judge who has had four days off this year. It is particularly hard, when you have one judge, one district attorney, and one public defender in an entire county—there is simply nobody to come in. Therefore, by providing this stipend, we are going to be able to incentivize folks to come in and help provide this service.

The other big thing this does is it also helps us to grow the pool. As you know, the rural counties are in a very difficult situation in regard to professionals. We do not have many doctors and nurses, we are short teachers, our police and sheriffs' departments are short-staffed, and attorneys are in there as well. Therefore, this helps grow the pool by being more flexible to allow, say for example, the state public defender to come in and supplement the work as well as get a stipend for it. You may have a Clark County deputy district attorney that comes in and helps some of the rural counties or the rural counties helping each other. I think this is a big deal in helping to grow the professionals we need in order to get this to work and provide the time off for these judges, district attorneys, and public defenders.

The way these amounts were calculated was we surveyed almost all the counties [Exhibit G]. A couple of smaller ones we did not get to, but let me give you an example; in Elko County, they have four courts, and what they do is they pool the judges and the courts on weekends to allow for one judge to handle the caseload. What this anticipates is that practice continues and we pay a stipend to that one judge who is working weekends; in fact, they have so many cases, they actually have Saturday and Sunday court. Some of the other jurisdictions only need to have one day of court to meet that 48-hour provision, therefore, they will get one stipend of $450, but if you work two days, you get $450 for each day. It is based on what the current process is, and I think the rural county judges, including Lyon County, Nye County, and Elko County, did a great job in pooling these judges. These efforts are allowing an individual judge to need only work one day extra every three weeks or one day extra a month, and whoever is working that extra day is going to get that stipend.

That is the whole theory. In total, it is almost $1.5 million for the weekend work [Exhibit G]. We are still discussing how we address holidays, but that is where we are at this point. Again, I want to thank, particularly, Senator Scheible for all the work and effort she has put into this. I also want to thank the Joint Interim Standing Committee on Judiciary; you all started this with Senator Scheible a year ago and have been working on trying to fix some of these problems for over a year. The meetings you had over the interim were just wonderful, and I want to thank you all very much for your efforts. I would be happy to answer any questions.

Assemblywoman La Rue Hatch:
My question is on the new section 3, subsection 3, where it says, "The funding shall not be used to pay any further staffing costs." I am a little concerned because I know that these hearings cannot happen without information technology (IT), clerks, and everybody else who is involved. Can you just explain why we would not be paying those individuals?

Mary Walker:
What we tried to do is have a narrow focus to hit the most problematic areas. We did not add this additional staffing even though a couple of jurisdictions did ask to add that. However, each of those staff are already under a union contract; therefore, if they work on weekends or are going to work over scheduled time, they are going to have overtime pay or something similar, whereas the salaried judges, district attorneys, and public defenders were not getting anything. What we feel is, that is the responsibility of the local governments to provide the staff, and that is why that was not included in this, but I really appreciate your question.

Assemblywoman La Rue Hatch:
I want to confirm, is every staff member in every one of those courts unionized?

Mary Walker:
I do not know for the most part if they would be. Typically, court staff are under the same union contracts as your general employees. There could be some staff members that are unclassified, but I do not know that. For the most part, they are going to be under a union contract, and if there needs to be additional stipends or whatever, we feel the counties would

be able to pitch in for the staff. As a policy matter and as a matter of trying to keep the dollars down, we made a point that says, Okay, this is what we are going to pay for and then the counties pay for the remainder. That was the policy decision.

Senator Scheible:
I completely agree with Ms. Walker. It is unacceptable to have staff working on weekends without paying them, and we did talk to the courts and various jurisdictions who are in fact, paying the clerks, IT, marshals, et cetera, because of the union contracts. If there were any jurisdictions that were not doing that, I would certainly want to know about it, but from a legal standpoint, as Ms. Walker said, that is the responsibility of the local governments. I am open to conversations. Obviously, I do not control the budget, but I am open to conversations about whether their budgets need adjustments. Basically, the policy agreement is that those staff members are the responsibility of the counties or municipalities. It is the professional salaried staff that we are trying to incentivize to add to this pool. The policy decision is saying the state should contribute the money since we are the ones who gave them the 48-hour rule.

Assemblywoman La Rue Hatch:
I do have deep concerns that we are looking to pay our judges, when it is their staff that supports them. For example, we could not do our job without our staff here. Further, many IT professionals who are salaried do not get additional hourly compensation. I would ask, if the logic is that the municipalities and the local jurisdiction should pay those staff, why should they not pay the judges? Why are we making a distinction between two different classes of employees?

Senator Scheible:
If there is a jurisdiction that is asking court staff to come in and not paying them overtime for weekends and evenings, I definitely want to know what jurisdiction that is because that is unacceptable, and we can address that. The reason for increasing the budgets here is to pay all those staff members and to not put the onus on the counties or municipalities to create all those budgets. They have limited budgets as it is, and the policy perspective is, as lawmakers, when we put an obligation on the local government to do something within 48 hours, we must give them the support to do that. We could invert it on its head, we could say that the counties are required to pay judges, public defenders, and district attorneys for the time they work on the weekends and will cover the cost for the staff; however, that would be more expensive to the counties and less expensive to the state. I think that this strikes the right balance of our taking responsibility for the 48-hour rule that we implemented.

I also want to emphasize that we are not only talking about paying the salaried employees who are already doing these jobs; we are talking about bringing in relief staff and getting those judges, district attorneys, and public defenders to work across county lines to provide services outside of their normal job duties. In a state where we are already struggling to staff our public defenders' and prosecutors' offices, we cannot afford to just hope that people will be nice enough to step in to cover for another county without compensating them.

Mary Walker:
There are several rural counties where the judges not only do their own jobs, but they are doing their staff's job as well. They have trained themselves on the staff's computer system to be able to use it when staff is not available. They are essentially working two jobs, and it is simply to allow the staff the ability to not come in to work on weekends and holidays. It is amazing what these judges are doing.

Assemblywoman Gallant:
I understand that you are trying to give the judges and staff time off, and I am not quite up to speed on the history from last session. It was 2021, correct?

Senator Scheible:
The Supreme Court decision was in 2020, and 2021 was when we implemented the pretrial release legislation.

Assemblywoman Gallant:
I see burnout on this across the board, and that is one of my concerns. We cannot ask people to be working weekend after weekend, and to do that for an entire career. I also think about my extended family who are very conservative Jewish, and from sundown on Friday to sundown on Saturday there is no electricity and no work as they are observing their religious beliefs and practices. I am concerned and worried about this infringing upon religious rights. How does that fit into this?

Also, I am wondering why it is these particular types of criminal cases with bail hearings with this rule when every other court does it within X number of days, X number of hours, or the following business day. Why are we making an exception here when we do not do that for other court cases? Would it not be more financially responsible if we could get it in line with the standard practice within the judicial system**?**

Senator Scheible:
I think what you are asking is why the 48 hours, and why not just extend the time. There are a couple of reasons for that. First, let me go back to talk about the religious freedoms, the burnout, and the expectations that we place on our professionals. I agree. What we saw during those two years after we implemented this statutory scheme, as well as today, is people are burning out and it is not working. That is why we came up with these solutions to allow for more coverage and more relief support. There are pro tem and senior judges available, and if you do not know what a pro tem or senior judge is; a pro tem judge is somebody who does not sit as a judge normally, but comes in like a substitute teacher would, and a senior judge is a judge who has left the bench but still comes in and covers for other judges, again, like a substitute teacher. Both types of judges can come in for a day, a week, or a calendar month at a time. We talked to senior and pro tem judges in those rural jurisdictions that were struggling the most and learned they would be willing to do this if they could get paid for it. The problem was that the counties have in place a mechanism and a budget to pay pro tem judges to cover a regular number of days a year for a judge's normal vacations, but that was not covering the weekends.

That is part of the purpose of this bill. To expand the pool to allow people more relief, allow time off, and avoid burnout, and to better implement the rotating schedules that Ms. Walker talked about. You might have two, three, or four jurisdictions that pool all their pretrial release hearings because it might only be six or seven hearings which do not generally take that long. We are not talking about hour-long hearings—I have done five hearings in 20 minutes before—therefore, they can probably finish five or six hearings in the three hours they are getting paid for. In the case where there is somebody who cannot work Saturdays, their shift can be scheduled to only get assigned to Sunday court and they do not get stuck having to work on a Saturday.

I also want to point out that we have plenty of other public servants who work around the clock, and in fact, that is part of how this all started. We recognize that our police officers work 24/7 and do not take breaks on weekends or holidays; therefore, the other elements of the judicial system must continue to function outside of normal court hours as well. We already have judges who are on call for search warrant duty, and that usually lasts about a week where they must answer their phone at all hours of the day or night in order to approve or deny search warrants for law enforcement officers.

In terms of aligning the time frame of the pretrial release hearings with other judicial hearings, there are other hearings that must happen in very short periods of time. Temporary protective orders are within 12 or 24 hours, those are very quick, and in 2020 when the Nevada Supreme Court decided the *Valdez-Jimenez* decision, the ruling required that the hearing be held quote, "promptly," without defining promptly. Therefore, it was left to the Legislature to come up with a definition of promptly that met the legal standards set forth by the Supreme Court, the U.S. Supreme Court, and other jurisdictions. That is how we landed on 48 hours. It is a reasonable amount of time, from when somebody is booked to the time that somebody is seen. We purposely picked 48 to ensure a 24-hour time period be present in the middle where if a judge, prosecutor, or defense attorney could not be present, you always have that 48-hour buffer, a buffer which includes the 24 hours in the middle to ensure there is no one day of the week that you would absolutely be stuck having court.

I think that it is also an incredibly important constitutional right to a fair and speedy trial, and it is a person's right when they are detained to be seen in a timely fashion. Therefore, coming before a judge within 48 hours to have release conditions set is now an important facet of Nevada law that we worked hard to develop in 2021. We are continuing to work hard on how to implement it and make it work. I think another way to answer your question is that we are not ready to give up yet, and there are ways to make this functional without having to sacrifice that protection put into place for people who are accused of crimes, but who have not yet been convicted and who remain innocent until proven guilty.

Assemblywoman Gallant:
I appreciate the effort in continuing to try to attain this 48-hour mark, and I understand it was left to interpretation within the Supreme Court ruling. Therefore, I would think there is some

wiggle room. I would like to request, what it is like in other cities across the United States? What is their standard, and how do we fall into that to see if we can find something that works for everyone, that would not necessarily cost the state more money?

Senator Scheible:
We did hear from the National Conference of State Legislatures over the interim and we heard from other jurisdictions that do them within 24 to 48 hours. Then, of course, there are others that do other timelines. I would have to refer to the minutes, but we did look specifically at other states with similar demographics and similar population sizes that do 48-hour hearings. However, we will definitely follow up with you with that information.

Chair Miller:
Please submit that to the Committee as well.

Assemblywoman Hansen:
I totally agreed with the intent in 2021 of A.B. 424 of the 81st Session, but had grave concerns about the rollout, and here we are. This is what we do, and this process is not new, but I am glad to see this work has been done. I appreciate the effort to reach out to many of the rural jurisdictions. Having so many rural jurisdictions, I appreciate the deputizing of the district attorneys and all that related work. Then to the appropriation, and we probably put the cart before the horse when we did not have that tied to the original bill. I really believe that what came out of the *Valdez-Jimenez* decision was really important; people are innocent until proven guilty, and they are entitled to a speedy process. When you are in custody for 48 hours, that is a long time, especially if you are innocent. Therefore, I totally appreciate that the state of Nevada is trying to comply with that Supreme Court decision, which I thought was a very valid decision, even being a layperson.

Regarding the money, I heard you mention that the allotment will go to the county, and whatever they do not use reverts to the General Fund. How often do we have to decide as a Legislature how much they get? Is it every two years since their budgets can go up or come down?

Senator Scheible:
We did think about this, and I am open to other suggestions, but the solution we came to was to put these numbers in statute and each county would get the amount specified on this list every single year on or prior to August 1, unless we change it. Then we have the reporting mechanism in there so that we can change it if we see the need to adjust it up or down. The idea is, it is not going to expire, and they are not only going to get it for this one year; if we do nothing, they will continue to get the same budgeted amount every year.

Assemblywoman Hansen:
Then we do have that oversight to review that. The other thought I had in regard to staff and weekends, and I do not know if this would work this way in practice, but I know in some of my communities, there are people that would love to be involved in the legal system, but they do not have the ability to do so on a full-time basis. They might have weekends free, and

they may be willing to be involved to serve in this capacity. I see that as a flexibility that would allow for part-time work instead of straining full-time workers. I just wanted to throw that in for consideration.

Chair Miller:
I do want to remind everyone that with the appropriation present now in the amendment, it changes the whole process for the bill, and this is a policy Committee. We are fleshing out the policy and whether or not this Committee feels it is appropriate or necessary. We are not concerned about the dollar amounts or even the funding of the bill.

Assemblywoman Summers-Armstrong:
Can you help us dig in a little more on section 1, subsection 4 of the amendment, "If more than 8 hours elapses between the time a person is taken into custody and the time of booking, the pre-trial release hearing must be held within 48 hours after the person was taken into custody." Is there a standard practice of reporting when someone has entered into a correctional facility or jail? How is that captured?

Senator Scheible:
Absolutely. First, I do want to clarify, in section 1, subsection 1 where it says, "within 48 hours after a person has been taken into custody," there was an amendment to change that from taken into "custody" to "booked," and I failed to include that in this amendment. I mentioned earlier about my noticing an error; this is it, and it is rather important. To answer your question, the reason that we are proposing to change it from "custody" to "booked" is that the time booked is something that we can track whereas we cannot track the time that someone was taken into custody. I think an apt comparison would be when you get to work, if you are a person who has to clock into work, we can tell the exact time that you clock into work, but we cannot necessarily tell the time that you parked or the time that you left home. What we are suggesting is that the time from when you are taken into custody to when you are booked is relatively short. However, if there were some extenuating circumstances where it took way too long, we want to be able to address it. For example, if we want to know what time you got to work today, we are going to look at when you clocked in, but if somebody says that they left the house at five a.m. and they did not clock in until nine a.m., we are going to say there is something weird going on here.

The problem is we do not have a system for tracking when people are taken into custody. We can go back and look at circumstantial evidence, but it is not a defined moment in time; therefore, instead of continuing to fight over a couple of minutes or even an hour earlier or later of when someone was taken into custody, the stakeholders agreed using the booking time—which is digitally recorded and listed on the arrest report—would be easier to track. However, if you had a report from a particular individual that there was a discrepancy between the time they were taken into custody and the time that they were booked, they would still be entitled to a hearing within 48 hours of being taken into custody.

Assemblywoman Summers-Armstrong:
I have a real concern here. I do not know what stakeholders you are speaking of, but let us say we have a traffic stop and—please correct me if I am wrong because I am not an attorney—the officer says, I want to ask you questions, and they respond, No, I am not going to answer and I am not going to let you look at my car. Then the officer responds with, Well, then you are under arrest. That person is now in custody, is that correct?

Senator Scheible:
One hundred percent.

Assemblywoman Summers-Armstrong:
That person is now in custody, and they spend some time in the back seat of the patrol car while the officers look at their vehicle and gather information. Then they are transported whatever distance that is to the jail. Can they be interrogated before they are booked?

Senator Scheible:
Yes, they can.

Assemblywoman Summers-Armstrong:
Then I have a problem with this because we need to be honest about when a person no longer has the agency to get up and leave. Once that person does not have the agency to move and leave, that should be where the clock begins; which is why I believe custody was the original intent here, and I have a problem with us now making a situation where a person can sit in the back of a squad car, not immediately be brought into a facility, be interrogated, and then finally booked—a process that could last for hours—and then you are adding all this time that they are without liberty before they get to have a hearing before a judge. I have a real issue there.

Senator Scheible:
I do not disagree with you, and you are correct about our starting with 48 hours from the time someone is taken into custody instead of when they are booked. I would encourage the public defenders who are going to speak in support to provide a little bit more color as to why going to booking, with the eight-hour limiting language on the back end, was a workable solution for them. It was their suggestion to design the statute in this way to utilize booking with that language in subsection 4. I am open to either way of approaching the bill.

Chair Miller:
At this time, I would like to call Mr. Piro up, not for testimony, but for a few questions. Based on what the Assemblywoman said and the hours that can go between the moment that someone loses their freedom to the moment that they actually get to the jail, let alone any type of booking or proceeding, I think we need to bring this back to the fact this is about pretrial release. This is our constitutional obligation, pretrial release—not paying judges and

lawyers. Mr. Piro, in your experience as a public defender, what is the average amount of time and what is the longest time that you have seen between a stop, detainment or arrest, and the actual booking?

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
That is a difficult question to answer. If it is a major investigation such as murder, sexual assault, or a series of robberies where the police are trying to put together evidence and want to interview the suspect prior, that is going to take a few hours, which I think was the idea between the eight-hour cap. For example, in a traffic stop situation, a person who happens to get arrested is going to be brought to the station as soon as possible. Also, our Legislature has said, unless something more is going on, you can only keep a person at a traffic stop for 60 minutes; if nothing more is going on, you must let that person go. That person is going to be brought to the station, be booked, and then have their hearing within 48 hours. Does that answer your question?

Chair Miller:
We are getting there. In the absence of probable cause for a crime or a warrant which could trigger an arrest, 60 minutes would be the traffic stop maximum time. As a public defender, because you are coming in and the first thing you are seeing is these booking reports, how much time is actually lapsing between arrest and booking?

John Piro:
It is going to be different across the state. To expand a little, last session, this Legislature decided in accordance with the *Valdez-Jimenez* case, that "prompt" means 48 hours, which was a great decision this Legislature made. Unfortunately, prompt did not mean the same thing all over this state before that case. For example, if Assemblywoman Hansen got arrested, "prompt" in her jurisdiction could have meant a very long time. Even in Henderson or North Las Vegas, prompt could mean a few days. Therefore, we decided that 48 hours was the marker for prompt. In Clark County, we collaborated and we have the Initial Appearance Court, where you are seen within 12 to 24 hours of arrest. This bill is meant to fix that and find some workable framework for the rural jurisdictions, and we settled on 8 hours. We are trying to do our best because there was one jurisdiction, Lyon County, with an offensive 9.5 hours between arrest and booking, but other jurisdictions are keeping it down to 1 hour, 2 hours, or a few hours. Therefore, we are trying to move this process along and give the rural counties time to get a person processed, get them before a judge, and see if they should be released. Frankly, I do think this bill strikes the right balance.

Chair Miller:
What we are trying to get to is this 48-hour goal. What we do not want to do is extend the time. The chord was struck between the language of saying "taken into custody" and "booked" because we know there is additional time. If we are talking about 48 hours from booking, that is not 48 hours from detainment or from a person's liberty being limited, and that is what we are trying to get to; that it is not another creep increasing on those 48 hours. Taking out murder, sexual assault, and robbery syndicates, because we know those require

much more extraordinary handling, why is it not from the moment of arrest or the moment of the stop? With traffic and body cameras, we do have that data from when that person was stopped, whether it was vehicular or not.

John Piro:
I think this bill is trying to take that portion of extraordinary cases into account. I do not think 48 hours plus 8 is going to be the standard. I think it allows for an investigation that may need to take more time, but the majority of hearings will start from the time somebody gets to the jail within 48 hours, and in Clark, sooner.

Assemblywoman La Rue Hatch:
We heard at the beginning of this presentation that you could request for the hearing to be later; for example, say it is supposed to be tomorrow and you say, I am not going to be ready for tomorrow, make it two days from now. How often does that happen? Do you typically need more time or are you more often wanting to get right in there with your client?

John Piro:
It is really going to be a case-by-case basis. If somebody is alleging sexual assault, that allegation alone can ruin your life if it is not true. It is very difficult to get somebody out on those charges. Same situation with a murder allegation. You want to collect all the evidence because you want to have a robust bail hearing in front of the judge that takes into account all of the person's life history, their contacts with the community, what they do for work, and maybe some of the facts of the case that you are going to argue in that bail hearing, the purpose being to either get bail to an amount that person can afford, if it is justified, or at least have that person put their best foot forward in front of the judge to have the best chance of getting out. Therefore, there are occasions where we are going to ask for more time to make sure that we do a good job because it is a one-shot deal. If I go in there, do a crummy job, bail gets set at a million dollars, and a person sits for years and years to eventually receive a ruling of not guilty, I still ruined their life because I was unprepared at the outset.

Assemblywoman Hansen:
When we are dealing with this situation of warrantless arrests, Nevada determined 48 hours in 2021 in response to *Valdez-Jimenez*. However, Mr. Piro, you mentioned that in traffic stops, if there is nothing else, it is 60 minutes, correct? Therefore, it is even quicker, and the courts are doing that now. What happens if this situation happens on a weekend? Does this apply because we are talking about how sometimes the court has to do work on the weekend? If I understood you correctly, you said sometimes 60 minutes is all that is allotted in a traffic stop. Do you mean you can only hold them for 60 minutes?

John Piro:
If a police officer stops a person and does not find anything, that is the limit of time they can hold them.

Assemblywoman Hansen:
Thank you. I apologize for my confusion.

John Piro:
That is the limit of the time they can try to find something to arrest you for.

Chair Miller:
Thank you for answering those questions. Again, we are simply trying to further understand that extension.

Assemblyman Gray:
To Mr. Piro's last comment, oftentimes it can take a whole lot longer than 60 minutes to get a canine out there. Being on the rural county side of things when this decision was made, it was a ton of bricks that came down on us, and therefore, this is going to help. I would like to see a little more flexibility in how the money can be spent because there is a lot of technology that is involved for remote stuff, especially when you look at Lyon County and other rural jurisdictions. Nonetheless, thank you. Every little bit helps when it gets to the rural counties.

Assemblyman Orentlicher:
I am not clear about the point made about how there is not the same precision on when the suspect is taken into custody as to when they are booked. I would like a little more on that because I would have thought you take him into custody, put them in the patrol car, and the peace officer, at that point, would then create a record of when they have taken the person into custody. Is it that we do not trust that? Why is that not a precise time?

Senator Scheible:
There are two reasons that being taken into custody is not a precise time. The first one is, there is not an official and standardized record of when somebody is taken into custody. If I am the clerk who is in charge of reviewing all of the arrest reports from the day and putting them on the schedule for the 48-hour hearings, the arrest report is only going to come in with the booking time. Therefore, as I am comparing the booking time to tomorrow's hearings at 8 a.m., noon, and 3 p.m., I am saying, Okay, this person was booked at 8 a.m., we will put you at noon. This one was booked at 10 a.m., we will put you at 3. To determine when the person was taken into custody would require the clerk to go back, get the body camera footage, and watch for 20 minutes until the person is put into handcuffs. That number is not recorded on the arrest report in the way that the booking time is. That is why I gave the previous example of clocking in. That is when you clocked in. Now if there is a dispute and a person says, Hey, I got taken into custody 8 hours earlier, you can go back and check it, but to go back and check it is like trying to check what time you left the house this morning. You do not clock in at the time that you leave the house. We can estimate 16 minutes, maybe 30 minutes, because that makes sense, but 2 hours, now that is outside the time frame; that is why we put the 8 hours in there.

The second reason that the time that someone is taken into custody is not as easily identifiable as the booking time is that it is a constitutional question when somebody is in custody. Somebody is in custody when they are no longer allowed to leave, and sometimes that is before somebody is put in handcuffs, and sometimes it is not until they are put in

handcuffs. This is something that attorneys debate frequently and vehemently, especially when it comes to statements that are made by police officers. This is because being taken into custody is what triggers your *Miranda* rights, and whether or not they are in custody has to do with a whole lot of different factors about whether the person was allowed to leave, knew they were allowed to leave, and so on. There are many cases where defense attorneys and prosecutors will come in and argue about a particular statement that was made. For example, my client was sitting on the curb and the prosecutor will say, He was not in custody yet. He was still allowed to go. He only sat down because he was tired and he was scared, and I say, He was scared, and he did not think that he was allowed to go. He was in custody even though the cuffs were not on him. There is a very large body of Fourth Amendment case law that governs whether that person is considered in custody, and there is no way that we could possibly have an entire hearing where we make that determination before the 48-hour hearing comes up.

Now, certainly, we could go back on appeal, and if I won my argument that my client was already in custody and he or she did not get a pretrial hearing until after 48 hours, I would have a great argument for saying their rights were violated by not getting their hearing in a timely fashion. Those are the exceptions to the rule, but for the vast majority of cases where you do not have an argument about when somebody came into custody, the time frame is not much longer than 2, maybe 3 hours, and you are having the pretrial release hearings within 24 hours anyway. It is simply one less burden to put on the clerk to go from the time of booking to the pretrial release hearing.

Assemblyman Orentlicher:
I understand your concern about being certain when someone is taken into custody. However, I am still surprised that when an officer puts a person into their car, that is not a recorded time. Is that really so burdensome to say to the peace officer, you have to record the time?

Senator Scheible:
I cannot speak to the burdensomeness or how onerous it would be to change the process. All I can tell you is, that is the way the process is currently set up; the time stamp that the clerk gets is the booking time. That is the one that is communicated from the jail to the court.

Chair Miller:
The concern is about adding extra time on to these 48 hours. If we are operating in Clark County and Washoe County, there is a different practicality. However, if I am in a rural county and there is a traffic stop, it is very possible it is a three-hour drive to get to the jail. Again, we are trying to talk about all this additional time, and we know a police officer is required to make records and reports of everything they do; there is video, and there is the time you logged in to run their plates or their license. I understand that the booking time is what gets communicated to the courts, but that is not the same question as asking when the actual time is recorded. If we have all these other mechanisms to record and prove that time, why are we not starting the time there?

The other idea I would like to speak to is that people can just leave before they are arrested or booked, saying that they could have just left. Let me know in any case, has that ever been true? If that is the case, then the moment the police officer pulls someone over and says you were speeding, that person could literally say, No I was not and drive away. Let me know what would happen if that person said, No, I was not speeding, or No, I did not blow that stop sign, and drove away.

Senator Scheible:
Let me clarify. Generally, what I am arguing for my clients is that they were in custody at the time they were sitting on the curb because they were not allowed to leave, and they were entitled to have their *Miranda* rights explained to them at that moment in time. It is generally the prosecutor and the police officer who will argue they were not in custody and they were free to leave. We all know that being legally free to leave and actually knowing that you are free to leave are two very different things. I also want to hand this over to Ms. Walker because I think it might help if you understand how we did reach out to as many jurisdictions as we could reach before this hearing to ask about the average time between taking somebody into custody and booking them, and she has those numbers.

Mary Walker:
I did reach out to several organizations to try to get the typical time from arrest to booking for several of the rural counties. For the most part, it is within one hour. That is for counties Carson, Churchill, Douglas, White Pine, and Nye County in the Tonopah area. For Nye County in the Pahrump area, we do not have somebody to take blood tests in the jails and we must take them to the local hospital. Typically, it is an hour, but if you add the driving time and taking the blood test in there, it could be three to four hours to get all that done. Again, that is if they need the blood test and all those other things. They are very prompt in trying to get this done. In Lincoln County, their average was two hours, and the only one that had the problem that Mr. Piro mentioned, was Lyon County. They have a huge vacancy in their jail, and they are a county with a very large landmass; their county is 2,000 square miles.

One of the things I thought about regarding the eight hours, and I discussed this with the public defenders, is if you have an outlier such as Lyon County with more than eight hours, they know this, they are working on this, and they are trying to get that resolved. However, I think having that eight hours in there is going to make them be better and encourage them to get their time frames down to be within the limit and not go over that. I thought that was a good incentive for them to make some improvements.

Chair Miller:
That is exactly what we are all speaking to, is trying to get it better because it is not that we do not understand the technicalities related to the traffic, the blood testing, the geography, and the interrogation, but when you are the person who has been detained and is going to be locked in jail, it is a different perspective. For that person, the clock really stands still, and there are constitutional rights that we are here to protect. That is what everyone is trying to do, tighten this up to ensure there are not all these additional hours on top of this 48-hour standard we have put in place, again, considering what it is like for the actual person that is

now in jail and what they are going through at that moment. We are also talking about how long before they can actually make that first phone call; how long before they can call an attorney, their parents, their spouse, or someone for help to let them know what is going on. That is what we are getting at.

Assemblywoman Gallant:
In a scenario where there is a high-speed car chase, the driver gets into a horrible accident but does not pass away, and now he or she must be transported to the hospital, what does that 48 hours look like if that person is unconscious or in and out of surgery for several days? How does this timeline work with custody, booking, and a hearing in a case like that? I would like to hear both sides of it from process, as well as legally, on how that would play out.

Senator Scheible:
I can say that they can be booked at the hospital, therefore we would still be able to achieve that booking time, and I would suggest that scenario would be good cause to continue the hearing for 48 hours.

Mary Walker:
One of the things I found in talking with these justice courts, in particular, is they are very confused when the time of arrest is. There are many different types of interpretations. As Senator Scheible spoke to, it is a discussion in many courts, but the practicality on the ground is very confusing. My background is as a certified public accountant, and therefore, I want clarity. I want to know where it starts, and I know these judges do as well; however, it is very difficult on the ground to try and determine when the time of arrest is.

Chair Miller:
With that, we will go ahead and open it up for testimony. Is there anyone wishing to testify in support of Senate Bill 235 (1st Reprint)?

Tom Clark, representing Nevada Judges of Limited Jurisdiction:
I very much appreciate this conversation that has taken place this morning. I want to thank Senator Scheible, Senator Nguyen, Senator Harris, and the many stakeholders that you will hear from today who have been working on correcting and fixing this particular problem. The goal here is that we have equal justice regardless of population or where you are, urban or rural, and I think the amendment brought forward gets us to that place. The judges understand this is a very important issue that these defendants have their bail hearing within this 48-hour time period, and what we were trying to address was, do we have the personnel and judges available if a judge is sick or if a judge is on vacation? I believe this process outlined in the amendment gets to that particular place.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
We are in support of S.B. 235 (R1). On the Senate side, we did oppose this bill. At that point, we thought the bill did not go far enough in addressing some of the concerns we had related to the passage of the bail statute last session. At the time, Senator Scheible did promise to sit down with us and others to work through those concerns. Mr. Piro was at the table, I was at the table, judges were at the table, and nobody got everything they wanted with the compromised piece that is before you today, but it is moving us in the right direction. From a county and district attorney point of view, it provides more flexibility for us to get the job done within 48 hours. It is taxing our system. Again, I will remind you when bail was passed last session, not one dime was given to the counties to make it happen. Not one dime. I think Assemblyman Gray, when he was a commissioner, can talk about, especially from the rural perspective, the issues the counties had getting this off the ground, but they did it. I actually handle these hearings in Clark County, so if anybody has any questions about how they are handled procedurally, I am more than happy to answer them.

John Piro:
I was extremely grateful for this body when we passed the bail reform, looking at the *Valdez-Jimenez* opinion, and putting that into action, making sure that everybody, regardless of where they are in Nevada gets a prompt hearing, because we are innocent until proven guilty; that is a bedrock foundation. Making sure that everybody across the state gets the same type of justice is very important to me. There is an awesome article in the *Nevada Lawyer* magazine that breaks all this down, written by John J. Piro. I suggest we pass it along to the Committee. We all did sit at the table together and try to figure out the best way to move this along after we had two years following the passage of that bill to figure out some of the issues. I am grateful to the stakeholders and to this body who are moving this along and looking for the best way to make sure that equal justice is applied across the state.

Jennifer Berthiaume, Government Affairs Manager, Nevada Association of Counties:
We would like to thank Senators Scheible, Harris, and Nguyen for their willingness to work with all of the stakeholders on this. As a result of the bill passed in 2021, the 48-hour provision has been the largest fiscal impact to rural counties. National Association of Counties supports the amendment presented to S.B. 235 (R1), which allows for relief from the fiscal impacts and the ability to continue to effectively implement the 48-hour rule.

[Exhibit H was submitted in support of S.B. 235 (R1) but was not discussed. It will become a part of the record.]

Chair Miller:
I will open it up for opposition testimony for Senate Bill 235 (1st Reprint). Is there anyone who would like to testify in opposition? [There was no one.] I will now open it up for neutral testimony for Senate Bill 235 (1st Reprint).

Marcie E. Ryba, Executive Director, Department of Indigent Defense Services:
We are working to build resilient and sustainable indigent defense systems with our rural counties. One thing we have seen in these rural counties is the same attorney who is appearing five days in court and also for that sixth day for the 48-hour hearing. We heard from one attorney who likes to alleviate stress by going chukar hunting on the weekends, but he would have to leave early to come back to do these hearings. We heard from another attorney who wanted to travel to Reno to go shopping and had to sit in her hotel room waiting for a hearing to be resolved before she could go with her sister to continue shopping. There is a nationwide shortage of indigent defense providers. We are seeing this burnout with the fact that our public defender's office for the state is 44 percent vacant at this point in time, and we believe what this bill has set forward in section 3 will provide relief for our indigent defense providers, allowing us to work with the counties to have someone other than those same attorneys always providing representation at every hearing.

We also appreciate section 1, subsection 6, which clearly allows those remote appearances. In some of our smaller counties like Esmeralda County, the public defender lives in Pahrump, which is four hours away from Goldfield. Therefore, requiring that attorney to appear in person on a weekend would require an eight-hour round trip, plus the hearing. We also appreciate that the county public defenders can receive this additional amount, and that there will be similar language in NRS Chapter 180 for the state public defender to also receive this.

Chair Miller:
With that, I will welcome the bill presenter back up for any final comments.

Senator Scheible:
I want to reiterate this has been a tremendous group effort, and I do not know if I thanked all the stakeholders for coming to the table multiple times on this. Thank you. I am happy to answer any additional questions offline.

Chair Miller:
With that, I will go ahead and close the hearing for Senate Bill 235 (1st Reprint). Our last item on the agenda today is public comment. [There was no public comment.] Members, we accomplished multiple things on our agenda today. I will go ahead and adjourn today's meeting, and see you back at 8 a.m. tomorrow morning. This meeting is adjourned [at 10:09 a.m.].

RESPECTFULLY SUBMITTED:

_____
Aaron Klatt
Committee Secretary

APPROVED BY:

_____
Assemblywoman Brittney Miller, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a Work Session Document for Assembly Bill 404, submitted and presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit D is a memorandum dated May 11, 2023, submitted by the Executive Committee for the State Bar of Nevada Real Property Section; and presented by Mackenzie Warren Kay, representing Real Property Law Section, State Bar of Nevada, regarding Senate Bill 223.

Exhibit E is a letter dated May 10, 2023, submitted by Nicholas Cote, Western Regional Organizer, Conservatives Concerned About the Death Penalty, in support of Senate Bill 316 (1st Reprint).

Exhibit F is a conceptual amendment to Senate Bill 235 (1st Reprint), dated May 11, 2023, submitted by Senator Melanie Scheible, Senate District No. 9.

Exhibit G is a summary of stipend pay dated May 9, 2023, submitted by Mary Walker, representing Douglas County; Lyon County; and Storey County, regarding Senate Bill 235 (1st Reprint).

Exhibit H is a letter dated May 10, 2023, submitted by Dave Mendiola, County Manager, Humboldt County, Nevada, in support of Senate Bill 235 (1st Reprint).