MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-Second Session
May 12, 2023

The Committee on Judiciary was called to order by Chair Brittney Miller at 8:04 a.m. on Friday, May 12, 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
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:

Assemblywoman Danielle Gallant (excused)

GUEST LEGISLATORS PRESENT:

Senator Dallas Harris, Senate District No. 11

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:

Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Matthew Caldwell, Detective, Clark County School District Police Department
David Cherry, Government Affairs Manager, City of Henderson
Jason Walker, Sergeant, Administrative Division, Legislative Liaison, Washoe County Sheriff's Office; and representing Nevada Sheriffs' and Chiefs' Association
Christopher M. Ries, Detective, Las Vegas Metropolitan Police Department
Jessica Ferrato, representing Nevada Association of School Boards; and Nevada Association of School Superintendents
Homa S. Woodrum, Senior Deputy Attorney General, Office of the Attorney General
Colleen R. Baharav, Chief Deputy District Attorney, Elder Abuse Unit, Clark County District Attorney's Office
Catherine Nielsen, Executive Director, Nevada Governor's Council on Developmental Disabilities
Steve Walker, representing Douglas County; and Lyon County
Beth Schmidt, Director-Police Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Connie McMullen, President, Senior Coalition of Washoe County
Jordan Levy, Private Citizen, Reno, Nevada
Kent M. Ervin, Private Citizen, Reno, Nevada
Jacob S. Dorman, Associate Professor, Department of History and Core Humanities Program, University of Nevada, Reno
Cadence Matijevich, representing Washoe County
Fernando Melendez, Private Citizen, Reno, Nevada
John Loll, Private Citizen, Reno, Nevada
Stacie Wright-Hemphill, Private Citizen, Reno, Nevada
Sharath Chandra, Administrator, Real Estate Division, Department of Business and Industry

Chair Miller:
[Roll was called. Committee rules and protocol were explained.] Good morning, everyone. Welcome to Assembly Judiciary. We have three bills that we will hear today. The first bill is Senate Bill 38 (1st Reprint) and will be presented by the chief of staff to Attorney General Aaron Ford, Teresa Benitez-Thompson. Chief, your bill hearing is open. Please be sure to introduce your copresenters, and when you are all settled in and ready, please proceed.

Senate Bill 38 (1st Reprint): Revises provisions relating to offenses against children. (BDR 15-425)

Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General:
I am very happy to introduce Senate Bill 38 (1st Reprint). The Office of the Attorney General is hosting this bill on behalf of the Nevada District Attorneys Association and law enforcement. This bill deals with employees in a school district and communications between persons in power such as administrators and teachers and their pupils. With that being said, we have a very familiar face with us here today, Mr. John Jones, and then down south, we have Detective Matthew Caldwell as well.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
I would like to thank Attorney General Ford and Chief of Staff Benitez-Thompson for both sponsoring this bill and leading us forward as we navigate the legislative process. As the chief of staff indicated, Detective Matthew Caldwell from the Clark County School District Police Department is present as well. Before I begin my testimony, I would like to point out that today is the final day of Teacher Appreciation Week, and therefore I cannot begin this presentation without acknowledging the countless teachers who make a difference in the lives of our children. Further, as a point of personal privilege, I would like to give a special shout out to my own mother, who was a teacher for 42 years.

Unfortunately, as in every profession, we do have bad actors; those who seek to exploit those who they are entrusted to protect, and that leads me to S.B. 38 (R1). It is a compromised piece of legislation. We worked on the other side with Senators, the Attorney General's Office, public defenders, and the Nevada Coalition to END Domestic and Sexual Violence to arrive at the place we are at today. Senate Bill 38 (1st Reprint) creates the crime of luring a pupil. Generally speaking, luring is the communications, texts, calls, et cetera, which occur leading up to the commission of an unlawful act but not the unlawful act itself. There is presently a luring crime in statute; that is *Nevada Revised Statutes* (NRS) 201.560. However, that specific statute requires the victim be either under 16 years of age or have a mental illness and the perpetrator to be more than five years older than the alleged victim. This gap in that luring statute does not cover some of the crucial ages we see in our school settings. We have 16-, 17- and even 18-year-olds in our school who are not covered by the present luring statute.

As law enforcement, we are unable to prosecute some egregious communication that does meet the element of luring, but because of the victim's age, we are not able to prosecute. Generally, we catch this before the intended conduct was completed; parents discover the texts, or other teachers and students note the suspicious behavior or conduct, and notify the appropriate authorities or administration. What we are left with are communications that amount to evidence and intent to commit a crime but do not rise to the level of being prosecutable. Thus, we are presenting S.B. 38 (R1).

Now, I want to start with section 2. Section 2 is the bulk of the new bill. Section 2, subsection 1 prohibits a person with authority over a student under 18 years of age from contacting or communicating with the pupil with the intent to lure that pupil from their home or a place where their parents know they are to be, with the intent to, "(a) Engage in the commission of a crime punishable as a felony or gross misdemeanor; or (b) Cause or encourage the pupil to: (1) Engage in an unlawful act that, if committed by an adult, would be a felony or gross misdemeanor; or (2) Facilitate the commission . . . of a crime punishable as a felony or gross misdemeanor." Now, I want to point out that subsection 1 does limit the pupil to under the age of 18 because at the age of 18, a pupil no longer needs a parent's permission to leave the house. I understand this could exempt some kids in a school setting; however, discussing this matter with Legislative Counsel Bureau (LCB) as we were drafting the legislation, we believe it would cause more problems than it would solve by removing the 18-year age limit in subsection 1.

Section 2, subsection 2 prohibits a person with authority over a student from contact or communication with any pupil, regardless of age, with the intent to either engage in the commission of a felony or gross misdemeanor; or cause or encourage the pupil to: engage in sexual conduct; use an electronic communication device to transmit a sexual image; engage in an unlawful act that, if committed by an adult would be a felony or gross misdemeanor; or facilitate the commission by the person in a position of authority of a felony or gross misdemeanor. Now, the crimes listed in both subsection 1 and subsection 2 would be punished as a category C felony, meaning 1 to 5 years in the Nevada Department of Corrections, but I will note the crime would be probationable.

These provisions do not apply to a person who is married to the pupil or who did not have contact with the pupil during the course of their employment. They also do not apply to a situation where the pupil contacts a school employee and that employee promptly reports the matter to administration or authorities. Additionally, a person with authority over a child is defined as someone who is employed or volunteers at a school and who had contact with the student. This would include teachers, coaches, administrators, and potentially other employees, but it would be a fact-based analysis on whether they had contact with the particular student. I will note this is similar to the student/teacher sex contact statute, which requires contact by someone who is employed or volunteers in order to meet the definition. Further, the definition of sexual conduct, for purposes of this statute, does include conduct that occurs through the use of an electronic device even though the person and the student may be in different locations.

The legislation also makes conforming amendments to numerous other statutes, and that is why we are dealing with such a thick bill here. Sections 1, 7, 8, 10, 11, 12, 13, 16, and 17 add this new crime to various definitions of sexual offenses or crimes against a child that are located throughout NRS. This is similar to our current luring statute. This crime would also be subject to registration based on these conforming amendments. Section 5 adds this new offense to the list of offenses prohibiting a judge from ordering a psychological exam on adds a requirement that a judge prohibit a person convicted of this crime from using certain devices as a condition of probation. Section 14 defines this offense as "Tier II" for purposes of registration.

Sections 19, 20, 21, 22, 24, 25, 26, 27, and 28 authorize the use of this conviction for various employment and licensing decisions made by schools or boards of education. Sections 29, 30, 31, 32, and 33 require school districts to notify law enforcement and child welfare agencies of these allegations and prescribe how child welfare agencies conduct their investigations. Sections 34, 35, and 36 add this to the list of offenses kept in the central repository concerning records of substantiated abuse and neglect of children allegations. The remaining sections make conforming changes. With that, Chair Miller, I will turn this over to Detective Caldwell down south.

Matthew Caldwell, Detective, Clark County School District Police Department:
I am a detective with school police who has worked in this capacity for approximately 16 years. I would like to talk to you about a case example we have that really outlines the need for this change in the NRS. I am going to use pseudonyms for the teacher and the student who were involved to protect their identities. The teacher, I am going to call him John; and the student, I am going to call her Sarah.

John sent numerous inappropriate text messages and had inappropriate conversations with Sarah, a student from his class. John told Sarah he wanted to have five kids with her, have Sarah move in with him, told Sarah her body was perfect, and he liked that she dreamed about them together. John, via text, said he would get fired for talking to Sarah like this, but it was worth it. John had food delivered to Sarah's residence on Valentine's Day and showed up to one of her classes looking for her. Sarah said these actions caused her to become frightened so much so that she blocked John's number in her phone. Sarah was visibly upset when interviewed and said she was scared. She was concerned John knew where she lived, which is especially troubling as Sarah never gave John her address. John likely accessed the student database to gain access to her address.

John defended his relationship by stating the following in a text conversation, "The legal age of consent in Nevada is 16. It does not excuse it, but maybe that will help you breathe easier." He is having a conversation with a third party about this. "I am pretty sure I am not getting arrested. Worst case, they can fire me. There is precedent for my case, and that staff member did not get arrested. Exact same situation. They suspended the teacher, their name was not released, and they resigned. Because it was not physical, I do not think I am in hot water."

I would like to share with the Committee a few more text messages between the two of them as well. From Sarah: "I have major body dysmorphia, and I do not know why I dislike myself as much as I do for right now. I am sorry that I say it a lot." John says, "Your body is perfect, though." John later says, "Oh yeah, I mean you would look really good with green eyes, but I like your brown eyes." John again: "Hopefully I see you before the weekend, maybe even tomorrow." Another message from John: "Ha-ha. Okay, I am back in room for seventh, if you want to hang out." John later says, "Well, if you need anything, let me know. That is a lot of stuff to deal with for one night. I can have food delivered to the house you are sitting at, so you can eat." From Sarah: "Thank you, but it is okay. I really appreciate all you do." From John, "Yeah, I am also being selfish though, because if you are too tired to come to school, I do not think I get to see you." Sarah says later in conversation, "I do not

know what to wear tomorrow." Sarah again says, "Nothing is the answer then because I am going nuts." John says, "Ha-ha. That is so weird." John again: "I was just thinking about saying nothing." From John: "I could lose my job for talking to you like this, but I do it anyway because you are worth it." Sarah says, "I really want to have kids one day." John responds, "Yeah, you should have two of them and raise them on a farm." From Sarah, "Sounds perfect to me, like a dream come true." John says, "Yep, me too. Weirdly enough, I am pretty sure talking about this with you is exactly my dream come true."

There are a lot more messages I can go over if you wish, but this really illustrates how a staff member has special access to a student. A student has a conversation with him talking about things that a teenager will talk about, such as not being comfortable with their body, and the teacher uses that as an opportunity to gain access to that student and exploit her. Sarah later told one of her friends that she blocked her teacher and, "He honestly scares the shit out of me. I am trying so hard to dodge him, but he came to my class today and asked where I have been." This case is a clear example of a teacher who abused his trusted position in an attempt to engage in a sexual relationship with a student. John sent numerous messages to Sarah through the grooming process, drove to her home to drop off food items, and even showed up in her classroom when she tried to avoid him. John defended his attempted relationship with Sarah by stating it was not a crime because she was older than 16.

We must do everything we can to stop predatory behavior by the most trusted persons within our community. Every child has a right to feel safe and be free from sexual exploitation, especially when in a school setting amongst trusted staff members. I would also like to talk about the Clark County School District's (CCSD) policy they have; it is Policy 4100. If you would like, I can read what that policy goes over, but it basically covers communication between staff members and students. Would anyone like to hear that?

Chair Miller:
No, if you could just continue with the policy and the bill, please?

Matthew Caldwell:
I am sorry, that is all I have here. I could talk about the policy CCSD currently has. It basically addresses a lot of these issues that are brought forward in this bill, and therefore, changing this law should be an easy transition for staff members to understand because they already have a policy that covers many of the things that are in here. The difference is, it does not criminalize the behavior, it makes it an administrative violation. With that, I can pass it back to Mr. Jones, unless anybody has questions for me.

John Jones:
I think that completes the presentation. Both of us are available for any questions the Committee may have.

Assemblywoman La Rue Hatch:
As a teacher, what you are describing is horrifying, and I think most people in the room are in a similar place. My questions are on the exceptions on page 7. First, I am looking at section 2, subsection 3, paragraph (a); how often is it that a pupil is married to someone in

the school, because I have never seen that? Second, I am concerned about subsection 3, paragraph (b) where it says, "Does not have or did not have contact with the pupil in the course of performing any of his or her duties." Therefore, if there is a teacher in the school and he only sees the student after school every day at a 7-Eleven because that is where they go to hang out to get their snacks, they would not be subject to this. Is that correct?

John Jones:
All of that is correct. I will note that NRS 201.540 prohibits sexual contact between school employees and volunteers and students, and it has that exact same language in it. *Nevada Revised Statutes* 201.540 subsection 1, paragraph (c), subparagraph (2) states, "With whom the person has had contact in . . . performing his or her duties as an employee or volunteer." Therefore, the reason that is in this luring statute is because it was pulled from the statute regarding sexual conduct between employees and volunteers and pupils. We are trying to mirror them as much as possible.

Assemblywoman Hansen:
If the Chair would indulge, I actually was interested in hearing and trying to understand what the CCSD policy states.

Chair Miller:
Assemblywoman, I will send that to you. We have access to that policy.

Assemblywoman Hansen:
Okay, thank you. Essentially, what we are looking to do is codify for the state what these rules regarding communication are, correct? It seems Clark County School District has what their rules are about communication, and I am sure other school districts do as well, but this would make it more uniform and give those protections across the state rather than piecemeal it for school districts county by county. Is that what we are trying to do, as well as add the criminal penalizing portion instead of only the administrative punishment?

John Jones:
Yes, that is exactly what we are trying to do.

Assemblywoman Hansen:
Mr. Caldwell, I gathered the age of the female in those texts was over 16, but could you share with us, or do we know, what the age was of the employee?

Matthew Caldwell:
I believe he was approximately 38 years of age. To answer your other question as well, the policy I am referring to from the Clark County School District is Policy 4100. I emailed it to Mr. Jones, and he can probably forward that over to you if you wish.

Assemblywoman Mosca:
In section 2, subsection 2, it says, "a person in a position of authority who knowingly contacts or communicates," and I want to clarify this is not only teachers. This is anybody such as a coach or someone in or outside of the school setting as well, correct?

John Jones:
In section 2, subsection 4, paragraph (b), a "person in a position of authority" is defined as an employee or volunteer who has had contact with the pupil in the course of their duties. Therefore, yes, it would be broader than just teachers. If we have a custodian at the school who we can show has had contact with the child, then even they would be covered by this statute.

Assemblywoman Mosca:
Would that include community-based organizations that are not related to a school, but where this could still happen?

John Jones:
I think the volunteer portion is where they would fall under if they are a volunteer at the school.

Chair Miller:
I appreciate Assemblywoman Mosca's question because that was one of my questions, as well. We are always targeting teachers and educators, but what about the churches, the camps, the day care facilities, the Scouts programs, children stores, and all of these other places? We know that churches rank much higher than schools when it comes to this matter. Is there a law related to this for them?

John Jones:
Senate Bill 38 (1st Reprint) does not cover those behaviors, but if you want to propose an amendment to expand it to other areas in which children are vulnerable, we would be more than happy to engage in that discussion.

Assemblywoman Newby:
In your introductory remarks, you talked about how it is currently illegal to have contact with someone under 16 and you are trying to close that gap. What I am wondering is, why not just adjust that age in statute? Why add a whole other section to NRS?

John Jones:
The short answer is, other laws regarding teachers are grouped together, and we are trying to keep this law consistent with those. That is why we were unable to add this into NRS 201.560.

Assemblywoman Hardy:
My question is regarding section 2, subsection 4, paragraph (c) where it says, "'Pupil' means a person who is or was enrolled in or attending a . . . school." What if it is not found out, say, until the student graduates or leaves the school and goes somewhere else; could you still go after someone for this?

John Jones:
Yes, as long as the applicable statute of limitations has not passed. For this offense, depending on if it was conducted in a secret manner, et cetera, I believe it would be four years, but it could be three.

Chair Miller:
I have a few questions. The first question is why is this targeted only to schools? The thing about this issue is, it is so abhorrent. Thankfully, I have never been in a building where it has been caught happening, but I have friends who have been in buildings where things have happened. As one profession compared to another profession, this is the profession where, when this kind of stuff happens, there is a blame they put on themselves, and everyone in that building and community are thinking, What did I miss? Why did I not see it? Why did I not know? They find themselves blaming themselves for things they should not be blaming themselves for. Again, this is a profession where people literally take bullets for these kids. Therefore, to continue with the impression that it is also this profession where people go in to do anything but protect the kids, to allow that to become the narrative, I will always push back against it. Yes, one case is way too many. We must remember the people who are in these buildings and the sacrifices they are making to protect our children.

We also have to remember they are not the number-one group who is grooming or attacking our children, and that is why not including these other groups, but only schools, gives a false impression. With CCSD alone, we are at 16,000 teachers and 320,000 staff, and this is just one school district; we are not even including or talking about the other school districts.

Now, in this case, this gentleman clearly looked at the laws and used them for his benefit, but in most cases, I think we can agree that someone who is that sick, they are just that sick. If you are going to make a law like this, there are still too many gaps. That is what members have been asking: what about this and what about that? Therefore, why not completely close the gap? There was a case in Michigan maybe five or six years ago, and I remember it was a case between a teacher and a student where it did become a sexual relationship, and her defense was that he was 18. The district's position was that it did not matter that he was 18 and considered a legal adult; he was still in the school and a student at the time. Therefore, it did not matter that he was at the legal age of 18; it did not matter, as you said, that an 18-year-old has the right to leave their parent's home. I believe most of us agree there is a difference between an 18-year-old in high school and an 18-year-old out of high school. Therefore, why does it not expand to the point of graduation? If that 18-year-old is in school, they are still under the authority and protection of that school district.

John Jones:
I think your point about it only dealing with, at this point, the school setting, is well taken. I will say that it was Detective Caldwell who approached my office about the potential for this legislation, which is why we started here. With respect to the teaching profession, I could not agree more; in fact, I started my professional career as a teacher at Canyon Springs High School in North Las Vegas. I opened the school and taught two years there. Therefore, I am fully aware that shining a light on teachers may be a bit unfair when there are other activities out there that are just as egregious; but this was presented to us by Detective

Caldwell, and this is the issue that S.B. 38 (R1) is trying to address at this point. Again, as I said, if you want to broaden this beyond just a school setting, you have open ears here, and I am sure the Attorney General's Office would fully agree with that.

With respect to the 18-years-of-age issue, I will note that section 2, subsection 1 does limit it to 18, and that was at the request of LCB due to the fact that an 18-year-old has agency and can leave their house whenever they want. However, section 2, subsection 2 does not limit it to 18 years of age. That is the part that explicitly talks about sexual contact, use of communication to transmit a sexual image, et cetera, and that is not limited by age.

Matthew Caldwell:
When something like this happens, it is a traumatic event for everyone, not only the student, but also for the staff members at the school and the people whom the kids interact with at the school. Our intent is not to target teachers or to say teachers or staff members are bad people; we are only trying to prevent things such as this from taking place. That is really it. I understand how you feel, and I like what you are saying about including other groups. I think part of the issue with changing some of the laws is that 16 is the legal age of consent in Nevada. Therefore, if another adult met a 16-year-old somewhere else and they were not in a position of authority over them, they could basically say whatever they wish to them or engage in a sexual relationship with them. That is why the other parts of the law would need to be changed to fix those issues.

Chair Miller:
Yes, I hear you. However, this body has also created laws against people in custody from being able to give consent, as well as people in prison who are full-fledged adults. Therefore, it really comes back to the difference between someone in authority and whose role should include protection and someone who is not. Yes, granted, the scenario where there are just two unrelated people who run into each other, that is not the same; it is about the authority and the actual role.

With that, my other concern was regarding a student who has already graduated, which if we are looking at it seriously, you could consider the entire time they were in the school as grooming. Furthermore, in the case given as an example, that teacher who was using his knowledge of the law, who thought he had found the loopholes and thought he could get away with it, could also be the same individual who says they are going to wait until they graduate. Now, they are 18, they have graduated, and they are not at the school anymore. This person may say I have free rein, but we know, technically, what they were doing was using that time as grooming. What happens then?

John Jones:
That is a great question. It would be fact-specific. If we can prove that the communication evidenced an intent to commit one of the sexual acts outlined while the pupil was still a student, then we can proceed with prosecution. Now, if we cannot and do not have evidence to show that, we are not going to be able to prosecute even under the new statute proposed by S.B. 38 (R1).

Chair Miller:
I understand that my demeanor is rough right now, but I do not know if people really understand how we as educators feel about this when we are in that room every day. Most of us could never even imagine, just like most of you all, as healthy human beings, cannot even imagine this. Therefore, the accountability we take on ourselves when that happens, it is something that I cannot even articulate right now.

I do not see any additional questions from members, but do we have numbers of how often something of this nature happens in the state?

Matthew Caldwell:
That is really difficult to quantify because most of these relationships are secretive in nature, and then if we investigate, most of the things that come to us, come as a rumor. For example, we will hear that Sarah is spending too much time with John, we have seen Sarah in John's classroom after school, or maybe Sarah was out by John's car in the parking lot. We will look into those cases but the majority of the time the victim will not tell us anything because they are in a relationship with the staff member, and it is almost like they are dating, are in love, and they are protecting that person. Then they will take steps to actively delete and destroy information. In our department, we utilize Cellebrite to go through people's cell phones. It is the same program the Federal Bureau of Investigation, U.S. Secret Service, and every other major law enforcement agency uses, and we will do our best. If we get consent from the victim we can search their phone, or we can ask their parents for consent, but sometimes that is denied, and we have nowhere to go with it. We do try very hard to investigate every one of these cases.

Furthermore, to talk more about what you said earlier regarding a student who leaves the school, if they tell us about something afterwards, we are going to look into that and look to see if there is a crime there. If there is no crime, we are going to communicate with employee management relations—that is the arm of the school district that investigates employee-related issues that are administrative in nature—then they can take sanctions against that staff member if we cannot do something on the criminal side.

Chair Miller:
I think we appreciate what you stated about students believing they are in a relationship, but how many of these reports do you get that are also unsubstantiated?

Matthew Caldwell:
To say they are unsubstantiated is difficult because we do not know if they are being truthful with us or not. As I said, they are in a relationship with that person, and they are trying to be secretive. It goes back to what you said earlier, when a staff member tries to blame themselves because they work in the same building as the other staff member who is committing a crime like this. They simply would have almost no way of knowing because it is not out in the open. They are not walking through the school holding hands, they are communicating via Snapchat, via Instagram, instant messages on their phone, and it is not out there in the open for everybody to see. Therefore, it is very difficult to say.

Chair Miller:
I was getting at how many there are because everyone in the building is also subject to false accusations. How many, not that you are unable to investigate, but how many are just false accusations? I do not know if you are the ones who decide or if that is before you, but how many are not substantiated?

Matthew Caldwell:
I would say if we investigated ten cases, we may make two or three arrests, somewhere in that range. It is all fact-dependent. It is very difficult because you have an uncooperative victim and then you have a suspect who does not want to talk to you either. It is a very hard position to be in, and we do the best we can with what we have. Furthermore, if we can disprove something, we are absolutely going to do that. Our job is not to try and arrest somebody, our job is to follow the evidence and present the facts; that is it. We do not get paid commission and we do not get anything for arresting people. That is not our goal. Our goal is to find the facts and follow the facts.

Chair Miller:
Out of those seven hypotheticals that you do not make an arrest, how many of those were due to the victim not cooperating or there was not enough information to move forward?

Matthew Caldwell:
It is hard to say because, as I said, we do not know if the person is being honest with us or not. Kids, unfortunately, are very good liars now. We will try to verify what people are saying to us and will do our best to verify other things, but as I said before, a lot of these things come to us as rumors. It is not actually an accusation that there is something happening; it is just a potential that something could be happening. Nonetheless, we take those things seriously because they could develop into a life-changing event for that student. If a student engages in a relationship with a staff member, those are things that will follow them for the rest of their life. They may not think about it when they are 15, 16, 17 or 18, but when they are 25, they are probably talking to their therapist about it.

Chair Miller:
I would absolutely agree with that. Again, what are the numbers? How many investigations occurred? Also, I am curious why we have 17 school districts, many charter schools, and countless private schools, yet we are only talking about one district. That is very curious because this is not just an issue in Clark County. Regardless, in Clark County, how many investigations, say in the last calendar year or last school year, were there, as well as how many convictions or substantiated cases?

Matthew Caldwell:
I would have to get that information for you, but sometimes that data is difficult to gather. We have different officers assigned to schools—patrol officers, sergeants, lieutenants—and when a case comes to them and they do not feel it meets the standard of a crime, they may not investigate it as such. Then, if they call us, we have roughly a six-person detective bureau that covers all of Clark County, and then we will respond and investigate cases that

we feel may be criminal in nature. With that said, I could check on those numbers for you and try to get that back to you.

Chair Miller:
Yes, we would appreciate it if you could submit that to the Committee, as well as to Mr. Jones, to have for the state, because this is a state law, not just a district law. Most of us are probably trying to count in our head the number of articles that we see or news clippings that we see regarding this, and the media is so crafty, half the time you start reading it and it is not even in Nevada, but some other state. It is just interesting that there are no numbers. I would think that someone at least should be tracking how many reports or accusations of this occur.

John Jones:
My office would not have stats on this crime because right now our position is, some of this conduct is not criminal. However, I will work with Detective Caldwell to see if we can get you how many open investigations they have had, how many were closed, as "unsubstantiated" may not be the word, and then I can also get you how many prosecutions we have had under our current statute regarding student/teacher sexual conduct. I think that will help provide some context as well.

Chair Miller:
Yes, any kind of data that would fall under student/teacher inappropriate behavior. At least at the school district levels, there should be some tracking on how much has been reported to the police.

Matthew Caldwell:
There are factors there; it depends on how the case is called in and then how it is categorized by the officer when they file their reports. Therefore, if they call it a "suspicious circumstance," that can encompass a lot of different things, rather than if they call it "sexual misconduct," which of course would be very easy to find. It all depends on how they categorize the event when someone goes to look it back up. All of our officers are trained in how to deal with those things, but it does not mean that everybody does exactly what they are supposed to every single time. However, I would say, the vast majority of the time, they are going to make the right decision. If they are unsure, they will call the sergeant, detective bureau, or the on-call detective to ask them how they should proceed with a case where there is a staff member involved with possible sexual conduct.

Chair Miller:
With that, we will go ahead and open it up for testimony. Is there anyone who would like to testify in support of Senate Bill 38 (1st Reprint)?

David Cherry, Government Affairs Manager, City of Henderson:
We support S.B. 38 (R1) and appreciate the work of Mr. Jones and others who have participated in crafting the bill before you today. The city of Henderson is home to tens of thousands of public and private school students, and we want to see every step taken to ensure that they are protected from those in positions of authority or trust who would seek

to take advantage of them or lure them into actions that could have severe physical and emotional consequences. Senate Bill 38 (1st Reprint) seeks to respond in law to what we are seeing occur in Nevada when it comes to students, and while it does not address every setting in which the type of behavior we heard about in testimony this morning can take place, it does seek to close a gap in the law that could leave the judicial system unable to punish those who prey on teens at a time when they may be most vulnerable to the influence of those in positions of authority and trust in a school setting. For these reasons, we urge your support for S.B. 38 (R1).

Jason Walker, Sergeant, Administrative Division, Legislative Liaison, Washoe County Sheriff's Office; and representing Nevada Sheriffs' and Chiefs' Association:
We are testifying in support of Senate Bill 38 (1st Reprint). Children should never be subject to actions or behaviors like this, especially in a school. This is a good bill.

Christopher M. Ries, Detective, Las Vegas Metropolitan Police Department:
We are in strong support of S.B. 38 (R1). We would like to echo the comments of Mr. Cherry and Sergeant Walker, as well as the presentation by the Nevada District Attorneys Association.

Jessica Ferrato, representing Nevada Association of School Boards; and Nevada Association of School Superintendents:
We are here in support of S.B. 38 (R1). I would like to specifically call your attention to sections 19 to 25, and 33 of the bill. We are here to promote safe and respectful learning environment for students.

Chair Miller:
With that, I will open it up for opposition of Senate Bill 38 (1st Reprint). Is there anyone here in opposition to Senate Bill 38 (1st Reprint)? [There was no one.] Then I will open it up for neutral testimony. Is there anyone here in neutral to Senate Bill 38 (1st Reprint)? [There was no one.] With that, I will welcome the bill presenters up for any final remarks.

Teresa Benitez-Thompson:
Listening to the Committee this morning and hearing a couple of things, I want to echo back what I have heard to make sure we are capturing the essence of that and be on the right track moving forward. At this point, we have identified a specific problem and proposed the bill with a specific solution, but we are hearing an appetite about broadening that in some way. Therefore, we are happy to engage in those conversations. To date, those additional areas heard on the record, we have not vetted those, but we are happy to do so. As you know, we are all under the gun to make sure that language can work, is not too broad, is narrowly tailored, and is not something that will have unintended consequences. With that, anyone who would like to engage in those conversations going forward, we are absolutely willing to talk about that because it would be some pretty quick work to look through statutes and chapters in some of those other areas. We have the time, and we are happy to do so.

Chair Miller:
Thank you. Yes, you can expect there are some members who want to reach out, and with that being said, I want to remind everyone that we are on a time limit. Next Friday is the deadline for second house passage out of committee. Therefore, we would appreciate receiving that data quickly because we would like to see how often this is actually happening. With that, I will go ahead and close the hearing on Senate Bill 38 (1st Reprint). Our next hearing is Senate Bill 61 (2nd Reprint), which is also from the Attorney General's Office. Senate Bill 61 (2nd Reprint) will be presented by Chief of Staff Teresa Benitez-Thompson. I also see you have copresenters; please introduce them, and when you are ready, proceed.

Senate Bill 61 (2nd Reprint): Revises provisions relating to exploitation involving the deposits or proceeds of an account held by an older person or a vulnerable person in joint tenancy. (BDR 15-427)

Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General:
Thank you for the opportunity to discuss Senate Bill 61 (2nd Reprint) and the subject matter that we feel is very important for consideration before you today. I have two presenters; down south I have Ms. Colleen Baharav, who will be speaking about this bill. I also have up here in the north, Senior Deputy Attorney General Homa Woodrum. For context, we are talking about the abuse, neglect, exploitation, isolation, or abandonment of older and vulnerable persons within *Nevada Revised Statutes* (NRS) Chapter 200. As we begin, there is a policy statement within that statute which really sets forth the mission that we are trying to move forward with. The policy statement, which has been in place in the state since about 1981, says, "It is the policy of this State to provide for the cooperation of law enforcement officials, courts of competent jurisdiction and all appropriate state agencies providing human services in identifying the abuse, neglect, exploitation, isolation and abandonment of older persons and vulnerable persons through the complete reporting of abuse, neglect, exploitation, isolation and abandonment of older persons and vulnerable persons." Today, we are going to be talking about the intersection of all of those different entities regarding exploitation, specific to exploitation when people have joint bank accounts and joint tenancy.

Homa S. Woodrum, Senior Deputy Attorney General, Office of the Attorney General:
Ms. Baharav will briefly discuss the existing law related to exploitation and why Senate Bill 61 (2nd Reprint) is crucial to protecting the rights of Nevada seniors and people with disabilities. I will then walk you through the bill, offer some additional remarks, and we will look forward to your questions.

Colleen R. Baharav, Chief Deputy District Attorney, Elder Abuse Unit, Clark County District Attorney's Office:
We are the unit responsible for prosecuting cases involving abuse, isolation, abandonment, and exploitation of older and/or vulnerable persons here in Nevada. I am here today with Ms. Woodrum to present to you Senate Bill 61 (2nd Reprint). This bill has been presented to all of you because after 2018, our most vulnerable citizens, our elder and differently abled citizens, have been left unprotected from exploitation by persons who are meant to help them merely because that caregiver has been added to an account belonging to that elder or differently abled person. The law, after the Nevada appellate court decided *Natko v. State* in

2018 found that this caregiver being added to an account constituted a gift of the entirety of the account to the caregiver. This gift is to the exclusion of the needs of the elder or vulnerable person who originally owned that account. I want to be clear; Senate Bill 61 (2nd Reprint) does not add a new crime in Nevada. It does not change any penalties for already existing crimes. What it does do, is protect our seniors and most vulnerable residents from exploitation by a caregiver.

As Ms. Woodrum indicated, exploitation of an older and/or vulnerable person is codified in NRS 200.5092. As you can see, it is a crime that involves caregivers taking advantage of our most vulnerable residents. It is a crime that requires obtaining control through deception, intimidation, or undue influence over the assets or property of that resident with the intention to deprive them of the use or benefit of their own assets or property. It involves the conversion of assets from these elder and vulnerable citizens, depriving them of the use of their own assets or property. To be clear, we are talking about caregivers taking advantage of our vulnerable citizens. In 2018, the Nevada appellate court determined that the district attorney has to prove that at the time the caregiver is added to an account belonging to an elder and vulnerable resident, they had the intention to steal that money. This is rarely, if ever, the case.

As most of you are probably aware, exploitation is a crime of opportunity. It involves gaining the trust and confidence of our elder and vulnerable residents and striking when they are least able to protect themselves. The triggering event is typically hospitalization or incapacitation. The exploitation is often not discovered until families are looking at why their senior or vulnerable family member is destitute and cannot pay for much-needed care.

In the last 12 months alone, at least 32 cases of exploitation have been presented to the Adult Protective Services here in Clark County. These cases involved a caregiver gaining ownership of the account belonging to an elder or vulnerable resident and then emptying that account. None of those cases were able to be prosecuted due to the decision by the Nevada appellate court in *Natko*. This means that at least 32 families have no recourse under the law. Hundreds of thousands of dollars were removed from the assets of our most vulnerable residents without recourse. As the law stands after *Natko*, and without the intervention of S.B. 61 (R2), our elder and vulnerable residents are unprotected. It bears repeating; currently, without your intervention, our seniors and differently abled citizens are at risk. I will now turn to Ms. Woodrum to walk you through the bill.

Homa Woodrum:
Senate Bill 61 (2nd Reprint) has five sections. Section 1 adds language to NRS Chapter 200 to expressly state that the mere fact an account is held jointly does not preclude charges against a person for exploitation of an older or vulnerable adult. Our offices' proposed amendment [Exhibit C], that you will see on the Nevada Electronic Legislative Information System (NELIS), emphasizes each element of exploitation must be proven, as has always been the case under Nevada law. Important to this Committee's review of section 1 is the existing language of NRS 200.5092 defining "exploitation": one, a trusted relationship with the older person or person with disabilities; two, obtaining control of assets with the intent to deprive or converting assets with the intent to deprive. The conversion of assets

with the intent to deprive was added to statute 20 years ago, in 2003, via Assembly Bill 126 of the 72nd Session, a bill specifically brought to address, and I quote from the legislative record of when the bill was first presented in 2003 in Assembly Judiciary, "cases in which a trusted person is given control or possession of assets belonging to the senior in a lawful fashion and then the trusted person simply disposes of those assets for their own benefit," and that is in the existing law. However, *Natko* changed the course based on a banking statute related to joint accounts.

Sections 2 through 4 make conforming adjustments to reference section 1 elsewhere. Section 5.5 addresses NRS 100.085 related to joint accounts and held in joint tenancy, adding language that refers the reader back to section 1. Cases of exploitation are devastating for victims and deprive them of the benefit of the care and comfort of their own savings and income. When those victims must seek public assistance because of exploitation, current law forces them to seek hardship waivers instead of being directly eligible for programs such as Medicaid. That bears repeating: they are denied Medicaid due to the funds they have been deprived of and because there is no law enforcement component to the case, given that it cannot be charged at this time.

There is also, of course, the cost to the state to cover the services for that individual, which the individual originally saved to cover themselves. When our public guardians must step in to assist at these triggering events, they are left with little to no funding for the protected person's needs. In Elko County, a caregiver gained access to a man's account with a promise to assist him in his affairs and then emptied that account of $327,000. No case could be made with law enforcement to pursue the caregiver criminally for this egregious conversion because of the *Natko* decision. When the man applied for Medicaid, he was denied because there was no criminal case to show that he had not simply given $300,000 away. Ultimately, the Elko County public guardian worked incredibly hard to enter into an agreement with the state of Nevada to secure a waiver and allow for Medicaid coverage. State Medicaid then expended over $70,000 of state funds to pay for his care as a result. Sadly, he then passed away without the comforts he had worked his entire life to save for. That is a wrong that must be righted. Now, we would welcome your questions.

Assemblywoman Cohen:
I want to make sure that if there is a transmutation from separate property into community property in a marital situation, that is not going to be covered by this.

Homa Woodrum:
We have gotten this question before, and I think it is a valid question. We do not want to intrude upon the already existing civil remedies or bodies of law related to how assets are characterized, but I would direct the Committee to section 3 of the existing statute, NRS 200.5092; however, it features in section 2, subsection 3 of the bill, where we are amending, it talks about the definition of "exploitation," and it talks about undue influence. Then, on page 4 of the bill, in section 2, subsection 3, paragraph (b), it says, "'undue influence' means the improper use of power or trust in a way that deprives a person of his or her free will and substitutes the objectives of another person. The term does not include the normal influence that one member of a family has over another." Therefore, the definition of

"undue influence" would protect against the situation that you are talking about related to whether something is a community asset or a separate asset where people are conducting their normal affairs, as a married couple might. The exploitation statute is not meant to capture marital property in that way.

Colleen Baharav:
I can also inform you that we do not prosecute those cases involving marital property. That is a matter strictly for the family court, and that would not involve exploitation.

Assemblywoman Cohen
To be sure, even if there is a transmutation where they take the separate property and put it into the joint account, still it is not covered by this?

Colleen Baharav:
That is correct. This statute would not include that conduct as criminal conduct.

Chair Miller:
Could you also clarify the one instance where you said, "gained access"? There are a lot of ways someone can gain access to someone's account. Are you saying they convinced that person to become a joint owner on that account?

Homa Woodrum:
The exploitation statute has two scenarios. One relates to the intent to deprive at the time you gain access, which might be the example you are talking about where somebody convinces someone using a position of trust saying, Please just add me to this, and then immediately empties the account. However, the issue of conversion has to do with the time they are added. Perhaps their intention was to help. Perhaps the original intention was their saying, Let me help pay your bills, that online banking is too hard; just put me on the account, and I will make sure your bills are paid. That is why we made sure, with the proposed amendment [Exhibit C], to talk about how you must prove every element of exploitation, because just being added to help someone on an account would not trigger exploitation. It has to do with the scenario where you are added at the time when you meant well and then this crime of opportunity presents itself; maybe the person falls on hard times. In many of these cases we have people dealing with addiction, and they see the opportunity in this bank account. Maybe they mean to put it back, but they have the intent to deprive when they remove the funds, and that is the key with NRS Chapter 100.

A joint account is not a gift. It does not mean if I am on a joint account with someone, we have a shared ownership of those funds. Therefore, while it exists in that account, there is the potential I could take it or the other person could take it, but at that point, it is unrealized. The conversion happens when you go to the bank and you take $300,000 out, and now the person who was also on that account is deprived of their shared use. I think Ms. Baharav can speak to this. The totality of the facts would look at how that account is historically used. If I have a bank account with somebody and we both put our social security check into it, it will never rise to exploitation because it shows a positive intent through the life of the account to share those funds. What we are talking about are these very clear situations of exploitation.

I will mention, as someone who has done a lot of estate planning, it is easy as an estate planning tool to simply add someone to an account to get a little help. Yes, we should go get power of attorney; yes, we should go through all the proper processes. But what we want to do is address the fact that Nevadans are using this as a tool. Our office has tried to do education outreach saying, Please do not add people to accounts when you want help paying bills. However, I also do not want to deprive people of a low-cost and efficient way of getting help.

In the world we are in, we see all the bad cases, and I definitely want to give a shout-out to all the caregivers who are on accounts and act honorably. We are not trying to make them nervous or make them concerned about offering help through supported decision-making or other means. We are talking about these very egregious cases that come to us when someone is now destitute and homeless because all their assets have been taken, and the individual who took it faces no consequences.

Chair Miller:
Thank you for sharing because that was going to be my next question. How much education has been put out there about not doing this? Even in marriage, the same risk is present. Therefore, the education about not doing it when you can do power of attorney, or a bank trust—many banks have free trusts where you can go sit down in the bank and simply set that up—and there are also a lot of other scenarios. That is why I was going to ask that question. What we would like to know is, how much education is out there at this point? Furthermore, I do not like to see caregivers on accounts because that puts them at risk as well. Also, how often does this happen? We hear about one case here and there, but how often is this happening?

Teresa Benitez-Thompson:
When I first came into the Office, this is one of the bills that I read, identified, and have been open in saying this my favorite bill of the session. It is my favorite because having worked professionally as a social worker for so long, especially in acute care where people had prolonged hospitalizations, we were constantly encouraging people to identify your helpers. This is a call-to-action time; who can help you with what? When we have had times where people talk about their money being taken away, we make the call to Adult Protective Services (APS), and we assume that justice will find these people down the road and there will be an investigation. Then, when I came in and learned that was not so and how all the great work they had tried to do on the education level never made it down to the professional helpers where they are meeting people at their most vulnerable, it just was not getting down to the ground level. I personally did not know that there was this great brochure. We did not have a marketing budget, and I do not think anywhere in Health and Human Services (HHS) or APS do they have a marketing budget. So we can print some flyers and hope they get out there, but I think the truth is, most of the community does not have that understanding.

Also, I think our goal is to get back to the cases that we were able to prosecute prior to the *Natko* decision, and thus, we do have a precedent of what these cases looked like, including the types of cases that would be investigated and brought forth for prosecution. Therefore, we really tried to make sure, as we get statute to match the practices we used to do, that we

are making that narrow in how we talk about it and narrow so that we can go back to how we were conducting these investigations that would come to us from APS or somewhere in the HHS world pre-2018. I just want to put that on the record, if for some reason we see a large deviation; we do not expect that, and we do not expect marital cases to land up in this because they were not there before. Therefore, we want to put that on the record as clearly as possible as our intent and we think we have the language to get us there. If there was any confusion, then we would certainly follow up and come back to clean it up, but we think we are there.

Colleen Baharav:
Chair Miller, you asked how often this is happening. Adult Protective Services identified 32 cases in the last 12 months which they were not able to push toward law enforcement or prosecution because of the *Natko* decision. Prior to those last 12 months, I have been on the Elder Abuse Unit since, I think, September of 2019, and when I joined that unit, we had approximately 15 cases apiece of elder exploitation. Now, due to the *Natko* decision, my unit has 15 cases total. Some of those cases are older; the people were in warrant for a period of time during COVID-19, and thus, we were not able to prosecute them until now. However, the ability to protect these people has been diminished substantially even by the APS's number of 32 in the last 12 months.

Homa Woodrum:
Furthermore, that is 32 in Clark County, alone. Adult Protective Services had to manually look through cases to find language that related to joint accounts in order to provide us that statistic. I also contacted the Division of Welfare and Supportive Services that handles these waivers when someone is disqualified for Medicaid eligibility because it shows some sort of fraudulent transfer—that is how it looks to them. Remember, these are the only ones where people have taken the time to appeal and then request to still be on Medicaid. These are egregious amounts of money so there are maybe not hundreds of cases, but the ones that are there really matter.

As recently as a couple of months ago, there was a case involving $265,000; the customer's caregiver removed funds from the bank account and then refused to pay the facility. Therefore, this person was out $265,000 and now needed Medicaid to pay the facility because the person said it was a joint account. Another case that was mentioned was the $327,000 case out in Elko. The Douglas County public guardian let me know that, right now, they have two cases involving joint accounts and allegations of depriving people of assets, and now these individuals have to fall into our social safety net—which is there for them and is happy to assist—but there is a major difference. I am the biggest proponent of Medicaid there is, I used to represent them, but there is something to be said for the freedom to choose how you spend your money and how you spend your years with your savings.

Chair Miller:
As I said, I hate to hear those caregivers, even with the right intention, are doing this because they are vulnerable as well. I have a banking background and have seen everything that can happen with money. Therefore, are there times when accusations are made that go the other way, because there is vulnerability for the person in that joint account? Do we see cases of that happening?

Homa Woodrum:
Banking institutions are mandatory reporters, and they would report suspicious activity to APS; however, the triggering event we see is not necessarily about the conduct with the money. With somebody who is in need of assistance, if in digging we find that a caregiver was on an account, that alone does not automatically trigger us to look into exploitation, but what happens is we begin tracing the money and analyzing the situation that now disqualifies them for Medicaid. It is not a trap for people to fall into, as our chief of staff indicated; we have known for 15 years, up until this court of appeals case, exactly how these were handled, and it was not capturing individuals. We also have statistics about the volume of cases, and we can see the drop off in 2018. Unfortunately, we do not have data necessarily about these joint account cases because our law enforcement partners quickly realized they were not going to go anywhere, and they were told not to expend resources investigating them.

Therefore, I unfortunately do not have concrete data about how it would happen after the passage of *Natko*, but I will say, when someone makes a bare accusation—APS handles thousands of cases statewide; they have policies and they are incredibly trained as social workers to approach this with a social work model. They do not come in looking for bad actors; they come in saying, I have a senior or a vulnerable person who needs shelter; let us get them resources, and then they may make a law enforcement referral from there.

Chair Miller:
That is interesting. What you are saying is the report or the complaint does not start with someone saying, I had this joint account, and this happened; it starts, with someone having a financial need and then it is discovered.

Teresa Benitez-Thompson:
Referring to the policy of the state, it is that intersection with HHS, law enforcement, and the courts around exploitation. Typically, when you do the Medicaid application with the person and they are telling you that they have no funds or resources, one of the questions that is asked is, Have you given away money in the past five years? When you get to that point with them and they say, Well I had some money but then this person took it. Then we ask, Well, did you file a police report? That is where that conversation starts, presenting through HHS or APS.

Colleen Baharav:
In the last four years since I have been in that unit, we have had one case where the person who accused someone else of exploiting them was not telling the truth. We found this information out well in advance of prosecution in the very early stages because we are required by law to provide proof at hearings. As you are all well aware, we look through bank records, and we were able to discover the false claim and get the case dismissed.

Chair Miller:
I appreciate how the discovery process works and especially the question about asking people if they have given away money. With that, I will go ahead and open it up for testimony in support of Senate Bill 61 (2nd Reprint).

Catherine Nielsen, Executive Director, Nevada Governor's Council on Developmental Disabilities:
There is a long statement from us for this Committee in NELIS, but I will start with a brief statement [read from Exhibit D]. Financial exploitation of elderly and vulnerable adults, including those with disabilities, is the fastest-growing type of abuse in this population. One in twenty adults experience some form of financial mistreatment, but it occurs more frequently than it is reported. Almost one in ten victims of financial abuse will turn to Medicaid as a result of their own money being stolen from them. Individuals with developmental disabilities and those who need help with activities of daily living are more vulnerable to financial abuse.

Most people when considering the aspect of domestic abuse think of physical assault and verbal abuse. However, current research shows that financial abuse occurs just as frequently as other forms of abuse. Many vulnerable adults do not know they are being financially abused or are being abused by someone with whom they rely on care from. Options exist that allow the individual to open a special needs trust that may assist in ensuring abuse does not take place. However, many people who are vulnerable may not qualify for this option or do not know that it exists.

Current law protects the abusers rather than the victims of abuse. There is an expectation that the person with whom the individual trusts their financial security will use the funds appropriately throughout the individual's lifetime. Current law requires criminal intent be proven at the moment of joint titling in order for prosecution to take place, as stated. However, most often when a vulnerable person adds a supporter to their account, they do not believe the person will abuse them later on. By making the requested changes to NRS, individuals who are vulnerable will have their financial investments protected from mistreatment. This will, in turn, not only reduce the amount of instances of abuse and increase the ability to persecute the abusers but will also reduce the state's cost in unnecessary Medicaid funding. You can see on our submitted statement [Exhibit D] on NELIS where we provided some suggestions for this Committee, and we are open for questions if you have any.

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. 61 (R2). I do want to thank the Office of the Attorney General for bringing the bill and echo the comments that have already been stated today.

Steve Walker, representing Douglas County; and Lyon County:
We are in full support of S.B. 61 (R2).

Jason Walker, Sergeant, Administrative Division, Legislative Liaison, Washoe County Sheriff's Office; and representing Nevada Sheriffs' and Chiefs' Association:
We are testifying in support of Senate Bill 61 (2nd Reprint). We are all going to be elder one of these years, and we are hoping this protection would be in place for us when we get to that point.

Beth Schmidt, Director-Police Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We support S.B. 61 (R2), and we want to thank the Attorney General's Office for bringing this very important bill. To put this in context and to echo what Sergeant Walker has said, we are all going to get older. Many of us have children and have trusted family members whom we can turn to. What we have seen in our investigative division is there are a lot of our Nevada citizens who have no one and have no one to trust. That is what we are asking in this bill. They turn to a neighbor whom they trust, and it may start out initially that this person does not have ill intent, but maybe they fall onto hard times and this person is then left with no one. It is too late, by that time; the money is gone. If you have family and loved ones who are under your protection and are there for you, it is hard to get your head around the fact not everybody has that in Nevada. These people cannot protect themselves, and the way the law is written now, law enforcement cannot either. What we are asking is, please support S.B. 61 (R2); that way collectively—all of us together—can fight for and protect Nevada's elderly and vulnerable citizens.

Connie McMullen, President, Senior Coalition of Washoe County:
The Senior Coalition of Washoe County has been established since 1995, and I have been the proud owner of Senior Spectrum Newspapers for the past 30 years. I have reported many of these cases from the Attorney General's Office throughout the years, and just this past Monday, I got a call from a young man who was concerned that his mother was being taken advantage of by his brother. Yes, these are hard times for many people and oftentimes people turn to a family member out of necessity. On the other hand, the parent will not testify against the child. These are very difficult cases, but I commend the sponsors for bringing the bill forward, and I think it leads us in the right direction.

Chair Miller:
With that, I will go ahead and open it up for testimony in opposition to Senate Bill 61 (2nd Reprint). [There was none.] Then I will open it up for neutral. Is there anyone wishing to testify in neutral of Senate Bill 61 (2nd Reprint)? [There was no one.]. With that, I will welcome back the bill presenters for any final remarks.

Homa Woodrum:
We just want to, again, thank all our law enforcement partners and HHS partners. It is so important that we all continue to work together to address the needs of our vulnerable population and ensure that what they have worked hard for is protected and they are not in a situation where we are finding out after the fact.

Chair Miller:
With that, I will go ahead and close the hearing on Senate Bill 61 (2nd Reprint). Our next bill on the agenda is Senate Bill 368 (1st Reprint). Senate Bill 368 (1st Reprint) is sponsored by Senator Harris and will be copresented with Jordan Levy, who is on Zoom with us. Senator, your bill hearing is open. Whenever you are ready, you may proceed.

Senate Bill 368 (1st Reprint): Revises provisions relating to real property. (BDR 10-989)

Senator Dallas Harris, Senate District No. 11:
Thank you all so much for taking the time to hear Senate Bill 368 (1st Reprint). I have with me on Zoom my intern from University of Nevada, Reno (UNR). He just finished his internship yesterday, but we did not get a bill presentation in for him, therefore you all have the pleasure of being part of his very first bill presentation. Chair Miller, if it is okay with you, I would like to let Mr. Levy make his comments, and then I will walk through the bill and take the questions from there.

Jordan Levy, Private Citizen, Reno, Nevada:
I am speaking to address the amendment to S.B. 368 (R1) and the utmost importance of it. Senate Bill 368 (1st Reprint) addresses a critical issue concerning discriminatory restrictions or prohibitions and written instruments relating to real property. The bill proposes a procedure for removing such discriminatory provisions, as well as ensuring fairness, equality, and inclusivity in our communities. It aims to provide an efficient and effective process for eliminating these restrictions, promoting equal access to housing, and preventing discrimination based on race, ethnicity, religion, gender, or other protected characteristics. With this being known, I implore that the esteemed Senate and Assembly members pass the amendments of this bill. I find it utterly deplorable that discriminatory language still exists within the bill which does not represent the shared American values such as liberty, freedom, and justice for all.

There is no justice for homeowners who are forced to sign a document which claims they can be restricted from buying a house based on the color of their skin. Although it is unconstitutional to restrict someone from buying a home in a discriminatory way, the language used is dehumanizing. As a Black man who has had to work for everything in life, I find that if I were forced to sign a document that includes this language, it would make me feel less than. I would like to believe that through the efforts of leaders such as Martin Luther King Jr. and Malcolm X, society strives towards acceptance and equality in all faculties of life, including language. Current language makes it hard to consider as such; furthermore, I find it immoral that such language exists and has yet to be updated. Thus, I ask those who will potentially be against this bill, the question of, Why? In what ways is

the existing language justified, and how far as a society have we truly evolved if discriminatory language is still permitted? If we are truly to become morally righteous citizens, it starts with small things such as the language.

In conclusion, Senate Bill 368 (1st Reprint) plays a vital role in promoting equality, justice, and inclusivity in our communities. By establishing a procedure for removing discriminatory restrictions or prohibitions, this bill will contribute to a more equitable real estate landscape in Nevada. I believe it is essential for our state to adopt measures to uphold fairness and protect individuals from discrimination based on protected practices. I kindly urge you to champion and support S.B. 368 (R1) and to ensure its successful passage through the legislative process. By doing so, we can create a more inclusive and welcoming environment for all residents of Nevada. Thank you for your attention on this matter, and I appreciate your dedication to serving our state and its citizens.

Senator Harris:
Just a little bit of history for the Committee: in 2019, I along with then-Senator Julia Ratti brought a bill meant to address these restrictive covenants. After lots of discussion with stakeholders, where we ended up was a document essentially that you could file that would be recorded with your other housing documents, essentially lodging your displeasure with the language. As the years have gone on, I think there have been 19 of these filed in Washoe County—not the type of participation that we had hoped for, and I thought, we can do better. There has got to be a way to actually get this language out of these documents and let us actually remove it. It is not operable in any way, and it is frankly rather offensive that it is still there. Therefore, after many discussions with recorders, the NAACP [National Association for the Advancement of Colored People], UNR, and other stakeholders, we have come up with something better.

The bill you have before you is a mechanism for any homeowner to go to a judge and file a petition and say, Hey, I would like to remove this discriminatory language. Then the judge is going to say, Yes, this is, in fact, language that is not constitutional, and will issue an order to the recorder. That way the recorders around the state do not have to decide themselves which language should be redacted and which language should remain; the judge will do that for them. Then, you bring the court order in and the court order will tell the recorder to go ahead and redact this specific language. On top of that, what we are going to do is also record what is called a "restrictive covenant modification document," and that is going to allow recorders to tie the original document with that language in it to the new document where the language will be redacted. Important to note, it is not going to be removed; it is not going to just be deleted and then realign everything, it will be a redaction. Therefore, you are going to see the black mark where that language used to be. Also, important to note, the original document will stand; this will just be for documents moving forward so that we are not erasing the history of the existence of this language. It is really important we ensure that history remain.

Therefore, I think we have found a mechanism. Courts are willing to do this for free. The recorders are working on a low fee for this type of thing. I have ensured that the University of Nevada, Reno, who is doing a lot of this work researching these covenants, will be able

to file petitions with notice to the homeowners. I believe we have got the right mechanism to actually get this language, that is unenforceable anyway, out of these home documents. That is the goal.

Chair Miller, I will just note one additional point here. I had an amendment drafted but was unable to get it to the Committee in sufficient time for everyone to review. However, I did want the Committee to know that it is my intention to allocate $150,000 to the University of Nevada, Reno and to the University of Nevada, Las Vegas (UNLV) in each year of the biennium for them to continue to do the work that they have been doing which enables them to proactively file these petitions in particular neighborhoods where they notice this language still existing. That is something I am hoping to be able to present to this Committee between today and any potential work session. Nonetheless, I did want the Committee to note that it is my intention to seek those dollars to actually get some money behind the research that is already being done. With that, Chair Miller, I am more than happy to answer any questions that the Committee may have.

Chair Miller:
With the addition of that amendment, if it gets added, again, that will not be up to us. It changes the scope of the bill and the destination of it. I say that just so you are aware, because, of course, we do not deal with funding in this Committee. With that, we do have a few questions.

Assemblyman Yurek:
I think this bill is a great idea, and I think you may have answered this, but I would like to clarify it on the record. I am not a contract attorney, but I do recall issues with contracts that can become void when a specific provision is taken out without a severability clause. Now, I can imagine most of these documents that are recorded are pretty sophisticated and probably do have a severability clause that would maintain anything that is struck out; however, I do not think that would apply here because it does not seem like we are altering the contract, we are just redacting this for public consumption. Is that correct?

Senator Harris:
The language is actually already void and unenforceable, therefore, any severability that would have kicked in would have already happened. Yes, we are just redacting it for the public. In fact, I think the most important part of this is, a homeowner will no longer have to agree to that language in their document as they are purchasing a new home. That language will be blacked out, and I think that is how it should be.

Assemblywoman Hardy:
Previously, this would be done by a homeowner, and then this bill would have, as it says in section 1.3, subsection 4, an "interested person" doing it. Therefore, it could be the owner, a representative of a common-interest community or a nonprofit, or, as you mentioned, the two universities. Could you expand on that a little and share with us some of the other organizations you are thinking that would be able to do this?

Senator Harris:
Before this bill, the current state of the law was that another form was recorded that would simply lodge the homeowner's dissatisfaction with the language, and in law today, there is no mechanism to redact. This bill would do both of those things. It would put in place a mechanism to redact the language by the homeowner or an interested party. I think you have nailed it right on the head; my intention is for homeowners' associations (HOA) to be able to do this because the covenants, conditions, and restrictions (CC&R) are often the same for an entire subdivision, and we could really move on this if we could get HOAs to proactively get them out of their CC&Rs. Then my other goal was to, in fact, allow organizations, such as UNR and UNLV, that are already doing this research and educational work, the ability to also file a petition—of course, with notice to the homeowner, who could choose to object.

Assemblywoman Newby:
I recall in my previous life in Reno that this was an issue in the Newlands neighborhood and also in the neighborhoods around UNR, having many of these covenants still in existence. Perhaps this is too much into the implementation, but I would hope that if there are interested parties who are going out to file these property actions that they also provide education to the homeowners, because I can imagine it would be very scary to get something that says a group is going against your written documents on your biggest purchase of your whole life, your home. Therefore, I would hope there is some extra customer or citizen service there.

Senator Harris:
Thank you for that point. Yes, that is part of the reason why I am making a last-ditch effort and taking a little bit of a risk by putting this bill on the line to get these institutions some dollars to do that education.

Assemblywoman La Rue Hatch:
I think this is a critical bill. As a history teacher, I know that we have racial covenants across this state, and we were called the "Mississippi of the West" for a reason. Therefore, I think it is important that we are taking these off, while simultaneously preserving that history so we do not forget what happened. My question is on the process itself. The process seems pretty complicated for a homeowner to have to go to a judge, file the paperwork, and get all of this done. Furthermore, you mentioned that only 19 protest papers were filed on the last one. With that, I want to confirm that your intention is not necessarily for homeowners to do this, but for these organizations to do it. Is that why you are okay with the process being a little more complicated than, say, for the average homeowner to do?

Senator Harris:
My hope is that every homeowner, once they learn about this opportunity, would race down to the courthouse and get this petition filed. I am very much aware that may not be the case, and so I wanted to ensure there was an option for these entities that are already working in this space. In fact, you will hear from a few of them today, and they are actually cataloging where these exist. They have quite a bit of information that might make it a bit easier for them to do so.

The process is as complicated as it is mostly due to the fact that we do not want to require recorders to do this work on their own. We do not want to tell them necessarily, Hey, go through every record in your county, find all these instances, and redact them. That would be quite a bit of work for them to do. We also do not want recorders to necessarily be the ones to determine exactly where this discriminatory language starts and ends because they record documents; they are not attorneys, nor do they modify documents, they record them. Therefore, the process you see is really a function of getting this done in a way that makes all the people who have to be involved in this process comfortable. The best thing we came up with is something similar to what happens if you need to have personal information redacted; you go to a judge to get a court order and then the judge will direct the recorder to follow the court order. We took that model and tried to apply it here.

Assemblywoman Summers-Armstrong:
When we moved into our house 24 years ago, actually before then, when we bought the land in 1997, we found we had restrictive covenants, and it was quite startling and offensive to read the language. My question is, does the removal of this language also affect any of the other covenants? We ran into an issue and did not pursue it very far, but there was some talk in our community about, with this covenant being no longer enforceable, that it also could have an effect on the other CC&Rs; for example, whether or not we could form an HOA or only a community group. Do you know anything about how this might affect any of those things, or is it narrowly tailored enough so that the other governing mechanisms are not disturbed?

Senator Harris:
It is my intention to only allow the language that is already unenforceable to be redacted in the documents where they exist and not to affect any other documents in a way that they are not already currently affected by the enforceability of those provisions.

Assemblywoman Cohen:
I vividly remember the hearing in 2019 and really appreciate the work that you, Senator Ratti, and Mr. Ervin have done on this issue. It is startling that this is still an issue. My question is regarding the definition of "interested person;" did you consider including a neighbor? I could see a situation where some property owners or renters may not be concerned with the neighborhood, and they do not care about what is in the covenants because that was in the past. Contrarily, there may be some people who do not want to live next to homes that have these horrible covenants on them.

Senator Harris:
I did not, in fact, think about what it would look like if we were to include neighbors. My hope was that at least if you are in a common-interest community, once you get one of those CC&Rs, because it is the same CC&Rs for each home in the subdivision, that you can hit them all. Therefore, I am hoping that would, for the most part, address those issues where you do not want to be in the neighborhood or next to a home that has these particular

provisions in it. I would also note, if you have a neighbor who still has these on their home, go knock on the door, and let them know this petition is available. I am open to potentially including that if we can do it in a way which does not make other homeowners feel like their neighbors are all up in their business.

Chair Miller:
I actually appreciate the number of 19 petition filers. Not that 19 seems like a lot, but I think, often in our bubble up here, we think everyone knows, but in reality, even with efforts to get the information pushed out, it does not always translate quickly to the community. I also remember that hearing well, and I think 19 homeowners is a great number to see of those who have gone through the process. That is 19 people who knew about it, cared about it, and went through the steps based on principle. It is good that it is happening, and it will only increase. Not seeing any additional questions, I will go ahead and open it up for testimony in support to Senate Bill 368 (1st Reprint).

Kent M. Ervin, Private Citizen, Reno, Nevada:
I am speaking for myself today as a homeowner in Reno. We bought our 1930s home in Reno in 2015, and I read the fine print. The covenant started out sounding quaint. We cannot make moonshine, we cannot run a funeral parlor—but then I read that the property can only be owned or occupied by white people. Obviously offensive. Even though such restrictions are long illegal, we still had to sign the covenant, stamped read and accepted, to close the sale. After that, I worked with my then-Senator, Senator Ratti, and Senator Harris in 2019 to pass Senate Bill 117 of the 80th Session, cosponsored by then-Assemblywoman Lisa Krasner. Senate Bill 117 of the 80th Session seemed like a good solution, but it turned out to be insufficient.

First, many of the racist covenants apply to whole subdivisions, and we thought that one homeowner could file the declaration of removal of discriminatory restriction and it would apply to all properties in the subdivision, but it did not work that way. Second, the declaration is included in the documents when you buy a home, but so is the original document with the bad language. Third, it is hard to educate homeowners and get them to record these declarations on their own. Senate Bill 368 (1st Reprint) will fix these problems. The bill preserves the original historical document, which is important, but will redact the copies used in title packages as they move forward. With the help of Washoe County Recorder Kalie Work and American Civil Liberties Union interns, we started identifying racist covenants in Washoe County. These provisions are not subtle, and interns had no trouble identifying them once they found the century old book. The pandemic cut that project short, but I am very pleased that some of my UNR colleagues are working on this issue. Please support S.B. 368 (R1).

Chair Miller:
You make the number of 19 homeowners even more impressive because we forget about that COVID-19 gap that froze progress. Therefore, 19 is even more impressive.

Jacob S. Dorman, Associate Professor, Department of History and Core Humanities Program, University of Nevada, Reno:
I have been building on my colleague, Dr. Ervin's work by leading a research team consisting of four student researchers, my codirector, and myself, which has spent the last year working to do the research to find out where these racial covenants are and to create a map which I have submitted to the Committee. This shows the racist covenants in reddish brown, the areas in black are still to be researched, and we estimate there are approximately 11,000 of these property deeds with racist covenants in Washoe County alone. It takes quite a bit of research to find them, and similar to Dr. Ervin, I found out about this when I bought a home in Washoe County in 2018 because I also read the fine print.

I think this bill would be wonderful to pass and would support this work. It is something that takes quite a bit of research and leg work to find these instances. My team would also be able to notify homeowners to do some education about the history of housing discrimination to give them the option of removing this or to simply remove this on their behalf. I thank the Committee for your attention to this matter. I would also like to note we have the support of both Provost Jeff Thompson of UNR and Provost Chris Heavey of UNLV, and we have a team in place with experience in this issue to be able to do this research.

Cadence Matijevich, representing Washoe County:
Washoe County is here in strong support for this bill this morning. This is a bill that our Board of County Commissioners has taken an official policy position of support on. We are very grateful to Senator Harris for bringing the bill forward and for the work that she did with the county recorders to be sure that the integrity of historical documents is maintained, but that we have a way to discontinue the production of this awful language in title documents moving forward.

On a personal note, I too am one of the persons who resides in one of those 11,000 properties, and I made the commitment on the Senate side, and I make it again here to you and to Senator Harris, that I am going to go get in my neighbors' business and make sure they know about this. It is a wonderful neighborhood I live in, and I know that my neighbors will join me in taking the action we need to be sure that going forward, this language does not continue to be published.

Fernando Melendez, Private Citizen, Reno, Nevada:
I am a student at the University of Nevada, Reno majoring in criminal justice and political science, and as a future law student as well, I have been working on the previously mentioned research team at the University of Nevada, Reno. I find that history is very important to preserve, and it is important to not just erase these covenants, but to redact them, amend them, and ensure that this history is not simply erased. That would be terrible for understanding Nevada and all its past. Through my role, I have seen several different types of historical negative impacts on disadvantaged communities through my archival and storytelling research. I find it very important for this work to continue and would be in support of this bill.

I would also like to provide a bit of a legal perspective. These racial covenants were ruled unenforceable in 1948, deemed illegal in 1968, and these property deeds and procedures should match the laws and rulings that have been in place for several decades. Senate Bill 368 (1st Reprint) is a great way to move in the right direction to address that, and I urge your support.

John Loll, Private Citizen, Reno, Nevada:
I am a first year PhD student at the University of Nevada, Reno. I am actually on Dr. Dorman's research team, and I have been spending the last nine months or so looking at the Washoe County records and finding these covenants. It has been a fascinating process. I merely want to express my support for the bill, and I thank you for considering it.

Stacie Wright-Hemphill, Private Citizen, Reno, Nevada:
I am also a member of the research team. I major in geography, and my role on the team is finding these restrictive covenants and pointing out the restrictive language in them. What makes this project so important to me as a geographer is, it shows that racism is not something that people are just subject to, but live within, and piggybacking off of what Assemblywoman Summers-Armstrong said, it is heartbreaking to see this language. It is also frightening and terrifying to, at one point, show the obstacles that many marginalized communities have had to jump through to simply live somewhere. I personally would like to live in a state that acknowledges its past and does not try to erase it. That is why I think passing this bill is so important, and I am testifying in support.

Chair Miller:
With that, I will open it up for testimony in opposition to Senate Bill 368 (1st Reprint). [There was none.] Is there anyone wishing to testify in neutral of S.B. 368 (R1)?

Sharath Chandra, Administrator, Real Estate Division, Department of Business and Industry:
I am testifying in neutral. We did work with the sponsors in 2019 on S.B. 117 of the 80th Session to develop the form. We are happy to continue the work once this bill comes through if there are any changes to the form. For the record, we are not requesting any additional funding or anything to do this.

Senator Harris:
I want to thank you all for your time in hearing this bill and your questions. I look forward to continuing this work with you all as partners.

Chair Miller:
With that, I will go ahead and close the hearing on Senate Bill 368 (1st Reprint). The last item on our agenda is public comment. [There was no public comment.]

I will go ahead and adjourn. I know that the agenda currently posted does say 8 a.m. for a start time, but we will actually be starting at 9 a.m. on Monday. With that, this meeting is adjourned [at 10 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 proposed amendment to Senate Bill 61 (2nd Reprint), submitted by the Office of the Attorney General, and presented by Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General.

Exhibit D is a written statement submitted by Catherine Nielsen, Executive Director, Nevada Governor's Council on Developmental Disabilities, in support of Senate Bill 61 (2nd Reprint).