

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eighty-Second Session
May 17, 2023**

The Committee on Judiciary was called to order by Chair Brittney Miller at 8:17 a.m. on Wednesday, May 17, 2023, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda [[Exhibit A](#)], the Attendance Roster [[Exhibit B](#)], and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/82nd2023.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Nicole J. Cannizzaro, Senate District No. 6

Minutes ID: 1107



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Aaron D. Ford, Attorney General
Michael Schwartz, Chief Deputy District Attorney, Clark County District Attorney's Office
Nathan Chio, Lieutenant, Criminal Intelligence Section, Las Vegas Metropolitan Police Department
Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General
Alissa C. Engler, Chief Deputy Attorney General, Criminal Prosecution Division, Office of the Attorney General
Darin Balaam, Sheriff, Washoe County
Dan Coverley, Sheriff, Douglas County
Chris Crowth, President, Nevada Sheriffs' and Chiefs' Association; and Police Chief, Sparks Police Department
Jason Walker, Sergeant, Administrative Division, Legislative Liaison, Washoe County Sheriff's Office
Kiley Walker, Private Citizen, Reno, Nevada
Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson
Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers; and Member, Nevada Law Enforcement Coalition
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office
Beth Schmidt, Director-Police Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Ronda Bowman, Private Citizen, Las Vegas, Nevada
Brent Bowman, Private Citizen, Las Vegas, Nevada
Tiara Bowman, Private Citizen, Las Vegas, Nevada
Troyce Krumme, Vice Chair, Las Vegas Police Managers and Supervisors Association
Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Athar Haseebullah, Executive Director, American Civil Liberties Union of Nevada
Lilith Baran, Policy Manager, American Civil Liberties Union of Nevada
Nick Shepack, Nevada State Deputy Director, Fines and Fees Justice Center

Katie Brandon, Private Citizen, Reno, Nevada
Jodi Hocking, Founder/Executive Director, Return Strong!, Carson City, Nevada
Erika Minaberry, Private Citizen, Sparks, Nevada
Ashley Dodson, Co-Founder and Co-President, Cannabis Equity and Inclusion Community
A'Esha Goins, Vice President, Las Vegas Branch, National Association for the Advancement of Colored People
Shelbie Swartz, representing Battle Born Progress
Nicole Williams, Private Citizen, Dayton, Nevada
Garrett Hade, Organizing Director, Recovery Advocacy Project
Shauna Borrow, Private Citizen
Laura Martin, Executive Director, Progressive Leadership Alliance of Nevada
Alissa Cooley, Private Citizen, Las Vegas, Nevada
Hardy Cole, Private Citizen, Las Vegas, Nevada
Lauren Karp, Private Citizen
Ashley Gaddis, Private Citizen, Las Vegas, Nevada
Sean O'Donnell, Executive Director, Foundation for Recovery
Katherine Sitsis, Private Citizen, Las Vegas, Nevada
Julian Gregory, Private Citizen, Las Vegas, Nevada
Jessica Smith-Peterson, Private Citizen, Las Vegas, Nevada
Quentin Savvoir, President, Las Vegas Chapter, National Association for the Advancement of Colored People
Betty Guess, Private Citizen, Indiana
Madalyn Larson, Co-Chair, Northern Nevada Harm Reduction Alliance
Bishop Jackson, Jr., Private Citizen, Las Vegas, Nevada
Randy Fiedler, Private Citizen, Las Vegas, Nevada
Chandler Cooks, Private Citizen, Las Vegas, Nevada
Yessenia Moya, Private Citizen, Las Vegas, Nevada
Jason Makris, Private Citizen, Las Vegas, Nevada
Amy Yonesawa, Private Citizen, Las Vegas, Nevada
Karla D. Wagner, Private Citizen, Reno, Nevada

Chair Miller:

[Roll was called. Committee protocol was explained.] We have two bills today on the agenda. It is my understanding the bills' sponsors would like to present together. We have Senate Bill 35 (1st Reprint), which comes from the Office of the Attorney General, and it will be presented by Attorney General Ford. The second bill is Senate Bill 343 (1st Reprint), presented by Senate Majority Leader Cannizzaro and Michael Schwartz who is in Las Vegas. With that, the bill hearing is open. I welcome everyone to the table, and please proceed when you are ready.

Senate Bill 35 (1st Reprint): Revises provisions relating to controlled substances. (BDR 40-423)

Senate Bill 343 (1st Reprint): Revises provisions relating to fentanyl and derivatives of fentanyl. (BDR 40-501)

Aaron D. Ford, Attorney General:

I come before you today as the state's top law enforcement officer to discuss a bill that will give our state a new tool to fight the opioid epidemic by adjusting the law related to illicit fentanyl and penalties associated with its unlawful possession, manufacturing, distribution, and trafficking. Senate Bill 35 (1st Reprint) specifically makes an amount of fentanyl between 14 and 28 grams enough for a mid-level trafficking charge and an amount of 28 grams or more enough for a high-level trafficking charge. For our conversation today, when I say "fentanyl," I mean illicitly manufactured fentanyl, distributed and trafficked fentanyl. I do not mean properly, medically prescribed fentanyl.

Before I go further, I want to be clear about what this bill is not intended to do. I would like to invoke a popular television show to demonstrate. It is called *Snowfall*. I do not know if any of you have ever watched *Snowfall*, but it is an interesting television show to draw an analogy from. If the members of the Committee have not seen it, my apologies, but I do think the analogies are apropos. It is a story about how crack began. The show chronicles how an off-the-books Central Intelligence Agency (CIA) operation contributed to the destruction that rock cocaine leveled on South Central Los Angeles.

This bill goes after Teddy McDonald in that show. He is the CIA agent who buys cocaine from Central America and South America and manufactures it for sale in South Central Los Angeles. This bill goes after El Oso, who helps Teddy secure and distribute the cocaine. This bill goes after Franklin Saint, who buys the cocaine from Teddy and runs the enterprise that manufactures crack, which involves the cooking and rocking up of the cocaine that is being distributed. This bill goes after Franklin's aunt and uncle, Louanne and Jerome, who help to distribute the crack into the communities. Yes, the bill goes after Leon, one of Franklin's childhood friends, who also distributes crack and oversees others who sell it. But it is not intended to go after Wanda. Wanda uses and is addicted to crack. To be sure, when Wanda was actually cooking it up, she would be a target. But as an addict, she is secondary under this bill. Stated succinctly, I am not trying to recreate the war on drugs during the crack cocaine era. We made mistakes then, and we need to learn from those mistakes; we will not and do not want to repeat them here.

As an aside, after the hearing on this bill in the Senate, it was asked why I referenced fictional characters in this discussion. Obviously, it was by way of an example. But let us be clear, while I may reference fictional characters, this issue is indeed nonfiction. We can all name friends, family members, colleagues, and others who have been affected by fentanyl, including those who use drugs and who are addicted. That is not lost on me, and I am sure it is not lost on you. That is why this bill is not intended to go after those who are struggling with addiction. We learned incarceration does not help those who need help unless help is

offered during incarceration. That is why I have included in Senate Bill 35 (1st Reprint) "medication-assisted treatment" (MAT) for opioid use disorder, so jails and prisons can offer help to those finding themselves incarcerated. We have had conversations with addiction and recovery stakeholders who actually proposed more resources for MAT, and I support that as well. Access to MAT is becoming more of a reality every day.

Section 1262 of the Consolidated Appropriations Act, 2023, removes the requirement for practitioners to hold a separate waiver to dispense important medications to those suffering from substance use disorders. That is an important note for this bill as well. Senate Bill 35 (1st Reprint) pertains to those who traffic 14 grams or more of fentanyl. To be clear, a person who is simply using drugs while struggling with addiction would almost certainly not be in possession of a large amount of fentanyl, for example, 140 counterfeit pills for personal use. Some in opposition to this bill may disagree with our assessment there but my conversations with members of the recovery community and law enforcement support my contention. I do want to be clear, though, that while we are working very closely with stakeholders and concerned parties to ensure that this bill looks to have minimal impact on those who are not involved in trafficking, we continue to listen, and we are very much open to incorporating their concerns into this bill.

What this bill is intended to do is to give law enforcement the tools to go after those who are unlawfully distributing fentanyl and address the inherent danger it brings and the death that it causes. This drug is dangerous. This is not a moral crusade against drug use. It is a crusade to save the lives of our fellow Nevadans. We cannot stand idly by and do nothing.

I would also like to note one more thing that this bill does not do. It does not roll back elements of Assembly Bill 236 of the 80th Session. I am sure you are all familiar with A.B. 236 of the 80th Session. To the contrary, it advances the very policy that it embraced of adjusting weights and penalties based on specific drugs. Justice Hardesty, when he testified for A.B. 236 of the 80th Session, stated that expressly. He said himself that we would need to revisit the drug weights based on the particular fatalities, if you will, of drugs involved. We are doing that right here. This in no way is a rollback of A.B. 236 of the 80th Session. Instead, as I have indicated, it is a continuation of the policy that Assembly Bill 236 of the 80th Session embraced.

While we are seeking to tighten restrictions on and enhance penalties related to illicit fentanyl, because narcotics do not split into even doses on the same quantities, the gram amounts we are suggesting were determined by looking at possible dosages. To make a hypothetical comparison, 100 grams of fentanyl does not make the same number of doses as 100 grams of say, cocaine. We are talking about a much higher number of doses of an incredibly dangerous drug when matched, weight-to-weight, with the same amount of other drugs. We remain open to discussions regarding the final amounts and weight. But we believe that it is too dangerous not to reckon with how many more doses are contained in a gram of fentanyl.

When we are discussing trafficking, it is important to keep in mind the actual amount of the drug that can be distributed or sold. Lesser amounts of fentanyl are considered a potentially lethal dose as compared to other drugs. It should be clear, then, why we cannot treat fentanyl like any other drug, while the weights involved are inherently different when talking about this drug, a drug that can kill you with a miniscule amount. Fentanyl is a scourge because of these low dose amounts. It is simply far easier to overdose. It can be added to other drugs without user's knowledge, and it can create an additional likelihood of overdose.

According to data we received from the Nevada Overdose Data to Action Program, administered by the Division of Public and Behavioral Health of the Department of Health and Human Services (DHHS), there were 497 overdose deaths in Nevada in 2022 containing a synthetic opioid like fentanyl. This includes fentanyl analogs such as carfentanil. According to DHHS, there were 566 opioid-related deaths in Nevada in 2021, and in 59 percent of these deaths, synthetic opioids like fentanyl were found. Twenty percent of the 566 deaths involved heroin. Think about that for a moment: fentanyl is involved in essentially three times as many deaths as heroin; it is a dangerous drug. Opioids were also found in over 90 percent of all multidrug deaths in 2021 according to DHHS.

This is another sign of the extremely concerning problems of dealers intentionally mixing fentanyl in with other drugs, leading consumers to take narcotics without being fully aware of what they are taking. If a person were to take a large dose of cocaine without knowing it had a large amount of fentanyl mixed in, the results can be and oftentimes are deadly, and that is just deaths, by the way. According to the Centers for Disease Control and Prevention, in 2022, we had a range between 6.2 and 10.3 people per 100,000 per month visiting the emergency room with a suspected overdose. As you can see, and as you have undoubtedly heard, we have a big problem with illicit fentanyl, and this bill intends to address some of those problems.

Turning to the bill, let me review S.B. 35 (R1) with you section by section. Section 1, lines 3 through 9, establish two things: First, the affected chapter, *Nevada Revised Statutes* (NRS) Chapter 453, Controlled Substances; second, a definition of who is targeted by this bill, and that is "a person who knowingly or intentionally sells, manufactures, delivers, or brings into this state or who is knowingly or intentionally in actual or constructive possession of illicitly manufactured fentanyl, any derivative of fentanyl, or any mixture which contains fentanyl."

As an aside, I know there is a lot of debate around whether possession should be involved in this. Let me be clear. This is a trafficking bill. The definition of trafficking is weight and possession. You cannot remove possession from a trafficking bill because then you will no longer have a trafficking bill. We have possession bills to be sure, but this is a trafficking bill. We cannot remove possession from a trafficking bill and still have a trafficking bill.

Section 1, subsection 1 creates the crime of mid-level trafficking in fentanyl for those who traffic 14 to 28 grams of illicit fentanyl. This crime will be punishable as a category B felony by imprisonment for a minimum of 2 years and a maximum of not more than 15 years and by a fine of not more than \$100,000. Subsection 2 creates the crime of high-level trafficking in

fentanyl for those who traffic 28 grams or more. This crime is punishable as a category A felony for life with the possibility of parole after a minimum of 10 years served or for a defined term of 25 years, with eligibility for parole after a minimum of 10 years and a fine of not more than \$500,000.

Section 2 adds provisions of section 1 to existing state statutes regarding unlawful acts related to imitation controlled substances. Section 3 adds the provisions of section 1 to statutes regarding penalties for making available controlled substances which caused death. Section 4 adds provisions of section 1 to other statutes that deal with additional penalties for failing to render or seek medical assistance for persons injured or killed by the use of controlled substances under certain circumstances. Section 5 adds provisions of section 1 regarding unlawful possession of a controlled substance without a valid prescription.

Section 6 adds provisions of section 1 to statutes regarding possession for the sale of "club drugs/MDMA" [3,4-methylenedioxymethamphetamine]. Section 7 adds provisions of section 1 to existing language regarding the determination of weights of controlled substances. Section 8 adds provisions of section 1 to existing language regarding schedule I or II substances. It is not my intent to target fentanyl that is legally manufactured, properly labeled, including lot numbers, and is available for medicinal purposes through a distribution system approved by the Drug Enforcement Administration (DEA) of the U.S. Justice Department.

Section 9 ensures the enforcement measures in section 1 are applied to the statute regarding trafficking for controlled substances. Section 10 adds provisions of section 1 to the Good Samaritan Drug Overdose Act. Senator Cannizzaro will have more to say about that. Section 11 adds mid-level and high-level trafficking of fentanyl to the chapter regarding criminal history records. Section 12, generally speaking, adds provisions of section 1 to the statutes of crimes related to racketeering. Sections 12.3 and 12.7 add the provisions related to medication-assisted treatment that I referenced earlier in my testimony. Section 13 adds mid-level and high-level trafficking for fentanyl in the chapter on personnel as an immoral crime.

As I close, I want to note that my administration has been at the forefront of the fight against the opioid epidemic in Nevada. For example, we worked diligently to help form the One Nevada Agreement on Allocation of Opioid Recoveries. This agreement is an interstate allocation agreement with all Nevada counties and litigating cities. It provides a mechanism to allocate recoveries in opioid settlements and bankruptcies between the state, counties, and litigating cities with one purpose: to remediate the harms, risks, and impacts of opioids.

We have secured hundreds of millions of dollars in opioid settlements for the state and for the signatories to the One Nevada Agreement that will be paid over the coming years. Yesterday, I held a press conference and said we have brought in over half a billion dollars. I misspoke; I should have been a little more precise. We brought in \$606 million, well over half a billion dollars, including \$151,858,772.26 from CVS Pharmacy, Inc. in an opioid settlement that we just announced yesterday. We have continued holding manufacturers,

distributors, pharmacies, and others accountable for their roles in the opioid crisis, and the Substance Use Response Working Group (SURG) that I oversee continues to work to try to find harm reduction approaches to this, but this is not just a public health issue, it is a public safety issue as well, which is why I am here as the top law enforcement officer in the state attempting to find the right balance in addressing this issue.

Before I tender the mic to my colleague, I would like to note that I have great affinity and admiration for those who may disagree with this bill. I know this is not an easy bill to undertake. As you know, my office operates under what we call our "five Cs." One of those is constitutional law and the protection of all of our constitutional rights. In that vein, I am generally aligned with, for example, the American Civil Liberties Union and their fight to protect our civil liberties. I appreciate the public defenders who try to ensure that our criminal justice system, likewise, abides by our *Constitution*. There are many other organizations out there that work in this space, and we acknowledge their sincere efforts to work with us on this. We have all negotiated in good faith but, frankly, just could not come to agreement on certain points; such is the case sometimes where reasonable minds can disagree. I still stand ready, working with my colleague to my right to address this issue.

You are going to hear from people who are in the field every day encountering fentanyl in pill form, generally speaking, but also in powder form, and it is killing people. You will hear testimony from folks who have been affected directly by friends and family members who have been killed by fentanyl. You will hear from family members who asked me personally to pursue something along these lines. As we endeavor to do this, we ask that you give due consideration to this and help us to address issues that are affecting so many in our state right now. Thank you, Madam Chair. With that, I would like to turn the mic over to my colleague, Senator Cannizzaro.

Senator Nicole J. Cannizzaro, Senate District No. 6:

I am pleased to be here today with my colleague and friend, Attorney General Ford, to present to you a companion bill to S.B. 35 (R1), Senate Bill 343 (1st Reprint). This particular bill, along with S.B. 35 (R1), attempts to allow us some additional tools to address what is an ongoing and growing fentanyl crisis in our communities. I am honored to be here today to join the Attorney General, because even though I think this discussion can be difficult and there are certainly some very valid questions surrounding how it is that we implement this law, I do think it is a discussion that is worthy and an issue that needs our attention. It is something I think we absolutely have to address in some fashion. I am grateful to be able to have this conversation with you all this morning.

While we do not have perfect statistics in the state of Nevada to show just how prevalent fentanyl is, because it is frequently mixed with other substances, it is very uncommon and almost impossible to encounter what we would deem "pure, raw fentanyl." You are going to encounter this in our communities, by our constituents, by families, in a form where it is

contained within another substance. It is usually in very small amounts, but despite being in very small amounts, a very small amount of fentanyl is extremely lethal. I think that is really at the crux of what we are trying to address here with these bills.

Nonetheless, there is no doubt that we are seeing an unprecedented increase in opioid overdoses and deaths that can absolutely be attributed to fentanyl. For example, from July to August of 2022—that is one month, just from July to August of last year—Nevada saw a 66 percent increase in opioid-related emergency room visits. From January to July of 2022, Clark County alone saw an estimated 1,412 opioid-related overdoses. These numbers are staggering. This is not usual; this is not within what might be normal limits. This is the kind of data that I think requires us to act, as a legislative body, to take some kind of steps to address. They include first-time drug users and a lot of kids in our communities who are being preyed upon in order to gain money and cash and are being given fentanyl. Most of the time they are lucky if where they end up is just an emergency room. They may think they are taking something far less dangerous than fentanyl. As I said, if they are lucky, they will end up in an emergency room. But more often than not, if you are taking a counterfeit prescription pill or something that is laced with fentanyl, because the drug is so strong, they often do not even make it to the emergency room, and that is real. You will hear from some families who can talk about their experiences. We have all heard these horrific stories, and I would bet that everyone in this room may know someone personally through friends or family who has dealt with the destruction that this particular drug is doing to our families, friends, and mostly our children. If anything, the flood of fentanyl seems to be getting worse very quickly. We must use every tool at our disposal to help address this unprecedented crisis and be able to give law enforcement the tools they need to target those individuals who are preying upon our communities.

One of these tools is to talk about fentanyl in the trafficking context. For those who are intentionally manufacturing and distributing illicit fentanyl, they are doing so without any concern for human life; it is to turn a profit; and we should have the right tools to be able to identify and to hold those individuals accountable. What these two bills are seeking to do, in conjunction with one another, is to allow for those tools to exist, but also to create some balances, because we know that opioid use—which is helping to drive some of the fentanyl crisis that we are seeing—is absolutely something that needs to be addressed as well. I think we can do both. It does not have to be one or the other. And I do not believe that giving tools to law enforcement to be able to identify and hold accountable those who are victimizing our communities is something we should ignore. I think that we can do both, and I think these bills are really seeking that. What we have done throughout this process is to try to find a balance between those two different, but related and both important, ideals.

As amended, Senate Bill 343 (1st Reprint) is fairly straightforward. Section 1 establishes the crime of low-level fentanyl trafficking, which is a category B felony. A person who knowingly or intentionally sells, manufactures, delivers, or brings into this state or who knowingly or intentionally is in actual or constructive possession of illicitly manufactured fentanyl or derivatives or mixtures containing fentanyl is guilty of low-level trafficking and is subject to a 1 to 6 year sentence and a fine of not more than \$50,000.

The remaining sections of Senate Bill 343 (1st Reprint) make conforming changes much along the lines of Senate Bill 35 (1st Reprint) to ensure that low-level trafficking of fentanyl is treated the same as low-level trafficking provisions involving other schedule I or II substances as appropriate. As mentioned, when this bill was amended on the Senate side, we removed provisions that would have taken the low-level trafficking out of the Good Samaritan provisions in NRS 453C.150. Those are retained, so under current law, that particular section of NRS does allow that if you are experiencing an overdose or someone who you are with is experiencing an overdose and you call for help, where the evidence of that is mere possession, you could not be prosecuted for that when it involves low-level trafficking. Those provisions of NRS, as they currently exist, are retained within this particular bill and would apply in that fashion. We may need to make sure that is very clear in what it is we are attempting to do with that portion of the bill because of that amendment on the Senate side. You may hear that concern as well. We wanted to be clear with the Committee members that was part of what this bill was amended to reflect on the Senate side.

Additionally, I did want to note a couple of other things that I think the Committee may hear as well, so you are aware of ongoing discussions on this particular bill. We did receive some amendments and suggestions from Mr. Piro of the Clark County Public Defender's Office, whom I have spoken with. There are a few provisions of that amendment [[Exhibit C](#)] that I think we are still considering, and there is language that still needs to be worked out. Specifically, I believe you will hear a request to establish a new crime for intentional misrepresentation of a fentanyl product for individuals who are selling a product that they know contains fentanyl to someone and not telling them that it contains fentanyl. I think there is still language that needs to be worked out in that proposed amendment from Mr. Piro. I did tell him I was committed to continuing to have that discussion. That particular amendment would provide a higher penalty of 2 to 20 years and a category B felony. We are certainly taking that under consideration.

There was also a discussion, as I mentioned, about ensuring that the Good Samaritan pieces of the law as they currently exist in NRS are retained; we believe that is the case. But if we do need some language to help clarify that, we would be open to that as well. Mr. Piro also suggested discussion on an affirmative defense for individuals who are not aware of whether or not what they are distributing is fentanyl. What was presented to us, I think, deviates from what current Nevada law is because it requires certain pieces of a jury verdict form and pattern instruction. I did tell him I would be open to working on what an affirmative defense might look like and making sure that language makes sense. While we have not reached an agreement on that, we remain open to that discussion.

We also have discussions ongoing about potential studies to discuss lab work. Currently in Nevada—and this is true for any schedule I substance that you may encounter, and those are typically what you would see in trafficking charges and drug charges—we are not testing to see if that particular substance is present. We do not have the capacity to test for what we might call "pure fentanyl"; that does not exist. It does not happen if you have cocaine.

We are not testing for what portion of that is pure cocaine. We would need significant upgrades to Nevada laboratories in order to be able to accomplish that but would be happy to look at that issue more in depth because that is not something we would be able to do even with a whole bunch of money in this particular legislative session.

Those are some of the pieces that we have been discussing that you may hear today as well. We are still trying to work through some of those language pieces and find some consensus. I think to Attorney General Ford's point, when we are talking about trafficking, what we are really getting at is that when you have a particular amount of a substance, it is not for personal use. You are distributing that. You are using that to turn a profit and to prey upon communities without regard for human life, without regard to the damage and destruction that comes as a result of that. We have trafficking laws on the books currently. Some of those trafficking laws pertain to things, and you will hear testimony, this is absolutely not intended to be a reiteration of the war on drugs. There are currently substances for example, if you talk about gamma-Hydroxybutyric acid (GHB), or what we commonly refer to as a "date rape drug," you cannot possess that, that is, not if you possess a certain level of grams. When we were discussing Assembly Bill 236 of the 80th Session, and I provide that as an example, there is no legitimate reason for someone to have that substance. If you have it, you will be subject to trafficking penalties, and there are different penalties for something like a substance such as GHB.

Then for things like cocaine or methamphetamine, we treat them differently. I think we can do that without putting everything under the umbrella of trying to just go after or penalize or overcriminalize people who are addicts. Again, I think we can do both. If you look at current Nevada statute, there are exceptions to what we currently have under trafficking for many schedule I substances and those substances that there is not a legitimate purpose for someone to possess, unless they are victimizing and profiting from our constituents and the families that live in our communities. I believe fentanyl deserves to be in that category to be treated a little bit differently, and that is what these bills are attempting to do. I wanted to just offer that as some context with respect to the discussion that we will have today.

Madam Chair, I do have Michael Schwartz from the Clark County District Attorney's Office with me at the Grant Sawyer State Office Building. He is a prosecutor who deals regularly in these fentanyl cases. With your permission, I would like to turn it over to him to give some remarks, and then we will be open for questions. Thank you.

Michael Schwartz, Chief Deputy District Attorney, Clark County District Attorney's Office:

I am currently assigned to the High Intensity Drug Trafficking Area (HIDTA) unit. Before that, I was a homicide prosecutor, and before that I was a gang prosecutor. I transferred over to HIDTA in 2021 from homicide to deal with overdose death cases that are affecting and plaguing Clark County right now, especially with the use of fentanyl. Since 2021, I have been prosecuting overdose cases which involve individuals who have dealt fentanyl and that

fentanyl has led to killing an individual, and then we prosecute them under our statutes for providing the substance that kills them. Additionally, I also do wire interceptions and I do a high-level amount of drug charges specifically with fentanyl.

What we see on the prosecution side with overdose deaths—we have 16 of them right now in our system, whether they have been sentenced or we are currently in prosecution—we have 16 that have entered our court system. We have had more than two dozen investigations that I have been involved in, and I know Las Vegas Metropolitan Police Department has been involved in about one hundred of these investigations. With these individuals who we find have been killed by this fentanyl substance, we never find more than ten pills at most on them and usually a lot less. Usually, it is one or two that is very immediate, and there is usually a half pill still left a lot of times when we find these individuals.

When it comes to prosecuting individuals who are selling fentanyl with the pills, we have found that trafficking amounts at the current statute level is almost nonexistent. I can count on one hand how many high-level trafficking cases we have in our system. Of those few that we do have, almost all of them are some type of transport being done by an individual who is transporting it from one city to another different city, acting almost as a delivery person for an organization that deals in fentanyl. We never see these pill dealers at that high-level trafficking amount. Quite frankly, we very rarely see them at the low-level trafficking amount, which is 100 to 400 grams, as it currently states. The reason for that is for 100 grams of fentanyl, at this point, you need about 1,000 pills.

Recently I had a case where we were dealing with an individual, a nine-time felon who is a known drug dealer, who sells significant amounts of methamphetamine but also sells fentanyl pills. Our first buy with that individual was 40 pills that turned out to be fentanyl, knowingly fentanyl, based on the transaction that we had with him. That turned out to be about 4 grams on the dot. So, 40 pills is about 4 grams, and like I said, we have never found 40 pills on any of our overdose cases that I have been involved in; nowhere even remotely close.

What we are dealing with on the prosecution side is people who have hundreds and hundreds and hundreds of pills. People who are selling hundreds and hundreds of pills to our undercover detectives, and there is not a charge for trafficking there. It is just a possession charge. Even if someone sells 100 pills, while we can charge them with sale, the possession itself would fall in the 4 to 14 grams range. As this Committee is well aware, under NRS 453.336, if you have under 14 grams of fentanyl, it is charged as a category E felony, and that is mandatory deferment if you have one or two offenses. You can have 100 pills, and that would be a mandatory deferment even if it is prosecuted at the fullest level to trial. By mandatory deferment, we mean the individual would not end up with a felony conviction. The person could actually have the case dismissed as long as they follow the steps for the deferment. But even if you do get the felony, it is a mandatory probation felony as well.

Right now, when it comes to people dealing in 100 pills—and quite frankly, most of the dealers that we see dealing to individuals who are killing people are dealing about 100 pills a week, sometimes under that—those individuals are not facing any significant type of penalty; they are facing possibly a category C felony, if we can prove it, which is a 1 to 5 year sentence. If we cannot prove the sale, which a lot of times we cannot unless someone dies and therefore we can get into their phone, they are getting mandatory probation for dealing in 100 pills a week. It ties our hands and, quite frankly, leads to probably more deaths in our community.

One of the more frustrating things I have had to deal with is a case in which a 20-year-old woman died after buying five pills from an individual. We charged that individual with murder; I will call him Chris. I will not go for the full name. He was convicted of manslaughter and is now in prison. We were able to track down where he bought his pills from; a guy that I will call Oscar. Based on that, we did a search warrant and went into that person's house and found 800 pills of fentanyl along with other drugs as well. The individual ultimately responsible for dealing or supplying the pills that ended up killing a young woman in our community, we did not have enough for trafficking, even though he was known to be a person who supplied fentanyl pills to street-level dealers. He pled to that charge, which at that time was a high-level possession of controlled substance; a judge put him on probation; and he continued to sell fentanyl pills until a federal wire caught him. Now he is looking at federal time for drug distribution that leads to death. He is looking at a significantly higher penalty by the feds, but it took a year for the feds to get to him, and they do not take a lot of cases. During the meantime, this individual, for a year, was bringing in hundreds and hundreds of pills into our community.

At this current point, we do not have the tools to prosecute individuals who we know are known suppliers of fentanyl pills. The threshold at this point is too high. I would like to also note that fentanyl is unique in that regard. What Senator Cannizzaro said regarding GHB, I think should also apply to fentanyl as well. When preparing for this, I saw what happened in the Senate and I have seen people bring up sugar packets and say, Look, just one sugar packet is equal to 1 gram. You can end up with trafficking if you have four of one thing and then one of the other.

One gram of fentanyl can kill 500 people. It is scientific. After talking to medical toxicologists and forensic toxicologists, just doing brief Internet research, looking at the Centers for Disease Control and Prevention (CDC), 2 milligrams of fentanyl is lethal. If you put that into 1 gram, that is 500 deaths that can occur from 1 gram of fentanyl. That is unique. No other drug does that as far as I have been involved in. Methamphetamine does not do that; heroin does not do that; cocaine does not do that; fentanyl is unique with how deadly it is and how small an amount it is. A paperclip amount of fentanyl could kill 500 people, and right now, the fact that it takes over 1,000 pills to get to low-level trafficking, has maybe created this system in which people who are dealing fentanyl in our system are not facing the consequences they should be facing. In fact, they are facing

a much lesser penalty than people who deal in methamphetamine, cocaine, and heroin. Quite frankly, when you deal with methamphetamine, heroin, and cocaine, you are dealing with larger amounts of weight because it takes more of that in order to turn a profit versus fentanyl.

What this bill does is it gives the prosecution tools to fight the individuals who supply and deal in fentanyl and put this poison into our community. During my year and a half as a prosecutor for HIDTA, I have dealt with families of all different races, all different religions, all different backgrounds, all different wealth, and all different parts of the city. They all are affected in a traumatic fashion from this drug. This drug does not pick; it is not a drug for rich people; it is not a drug for poor people; it is not a drug for white people; it is not a drug for Black or Hispanic people. It is a drug that is involved in every community and every social status in every type of wealth, and it is just killing people. I would say the majority of my cases are individuals under the age of 25 who have died from this, including a 13-year-old girl who went to Adelson Educational Campus-Las Vegas, and a 17-year-old girl who graduated from Centennial High School and was playing soccer at community college. I have had overdoses at an eighth-grade middle school in Clark County. This is a drug that is killing our youth, and something needs to be done about it. Because of that and because right now the prosecution does not have the tools to fight these people, I strongly encourage you to consider this bill.

Senator Cannizzaro:

With that, we would stand ready to answer any questions the Committee may have.

Chair Miller:

Before we get into members' questions, I am just wondering, is there a toxicologist or pharmacist or anything like that here available for questions? [There was no one.] I was just wondering because he had mentioned and just making sure we had accurate scientific data.

Senator Cannizzaro:

I believe that Mr. Schwartzer, in his capacity as a prosecutor who deals in these cases, is speaking from a lot of his experience in having the evidence and the data for what was discovered, what was tested, what the results of all those laboratory reports are. If there are specific pieces that we can provide to the Committee, we would be happy to do that. I do not believe from my check of the audience here that we have someone who is a specific toxicologist or someone from the forensic laboratory who could speak to those particular pieces. But I do believe that Mr. Schwartzer's testimony relates to real-life data from cases he has worked on and what they encounter in the field, but we are certainly happy to provide any additional information. I believe he did mention publicly available information from the CDC as well.

Attorney General Ford:

Madam Chair, the facts that he recited relative to the lethality of fentanyl are not generally disputed. It is not generally disputed that he is accurate in that regard. But we are happy to supplement the record if you like with some toxicologists who have evidence of that for you if you would like to see that.

Chair Miller:

Okay, because we always want to make sure we have accurate information. And again, while this is still a new phenomenon that is being presented, we want to get as much information as we can. Attorney General Ford, I received an email last night stating there would be an amendment submitted and that I should expect that amendment either late last night or this morning. I am just wondering what the condition of that amendment is because I have not received it yet.

Attorney General Ford:

That amendment is what was referenced by Senator Cannizzaro. We have obviously been working in tandem with others such as the public defenders and others to try to ascertain what the amendment is going to look like. It is not quite there yet relative to which provisions we are going to accept, which ones we think are friendly amendments, and which ones we think are unfriendly amendments. We are not prepared, at this juncture, to provide it.

Chair Miller:

Okay. Would the amendment pertain to both bills?

Senator Cannizzaro:

I think that the amendment [[Exhibit C](#)] as proposed from the Clark County Public Defender's Office and Mr. Piro was related to both bills, because they sort of touch on the same topic area. Some of this does not amend language that is currently in the bill. Some of it is a request to add an additional charge or to add some additional language for a defense. I think we are still at the point where that language for those particular pieces as suggested by Mr. Piro that we are inclined to discuss, that language is not quite where it needs to be. Which bill it ultimately ends up in, I think is also still a discussion that we are having. But the proposed amendments that were submitted to us were pertaining to both bills and were not necessarily specific to one or the other. I think we are still working through those pieces of it, but there were those four pieces I mentioned during my testimony with respect to the new charge for the intentional misrepresentation of illicit fentanyl, the affirmative defense language, and then some Good Samaritan pieces, and a study. If there needs to be some language to clean up the Good Samaritan pieces and the study pieces, I think we are still working on that and which bill those pieces end up in, because they do not necessarily amend pieces that currently are in the bill.

Chair Miller:

Are there any questions from Committee members?

Assemblyman Gray:

One of the things I always try to be cognizant of—and I do not think it will happen with these limits which I think are far, far too high for any one person to be in possession of—are the limits and the penalties you have put in there for, it says, "state prison," is there any chance that if these guys get sentenced to 1 to 2 years or 1 to 20 years that they will first be sentenced to start their time out in county jail? I am really worried about our county jail, especially in the rurals, maybe getting hit pretty hard having to house some of these prisoners.

Senator Cannizzaro:

With respect to where individuals may be housed, typically when you are arrested, before conviction, for something that is a felony and that would require time within a state prison facility, you would be housed in whatever the local jurisdiction's jail is at, and generally people would be in that position until they were convicted and then sentenced to a prison term. Once sentenced to a prison term, they would transfer to the appropriate correctional facility within the Department of Corrections (NDOC), and whatever that particular placement may be is generally left to the Department of Public Safety, Division of Parole and Probation, to determine the appropriate housing for that particular offender. There is a possibility that they could be housed in those jail facilities prior to conviction. Generally speaking, they would go to a prison facility. In maybe some very rare circumstances, if they were in the jail facility for a long period of time in which they were sentenced to maybe a 12 to 30 month sentence, I think it is possible that they could have served out what would be the vast majority of that 12 to 30 month sentence in the jail facility and then they may just have to do a quick transfer and then a release, if they had served their time. Generally speaking, if it is a state prison term, they are not going to spend that state prison term in a jail facility.

Madam Chair, in Las Vegas I have Lieutenant Nathan Chio of the Las Vegas Metropolitan Police Department available for any questions. I do not know if there is anything else he wanted to add, but he may know a little bit more than I do. But I think generally speaking, they would be in a prison facility once convicted and sentenced.

Assemblyman Gray:

I was only referring to post-adjudication, not pretrial. I just want to make sure if they are sentenced they will be transferred to a state prison facility in the most expeditious time possible.

Senator Cannizzaro:

Again, a lot of that is a decision that will be made based upon capacity and infrastructure within each of the local facilities. Generally speaking, once you have been sentenced to a prison term, as expeditiously as possible, and what that entails for that particular case would be in a state prison.

Chair Miller:

You mentioned capacity, and based on the Assemblyman's question, is there a concern about having room to house? I guess the real question would be, how many more people do you expect would be imprisoned?

Senator Cannizzaro:

I do not know that anyone sitting before you today, no matter what their position is on the bill, could tell you exactly how many. We know that there are cases of individuals whom we can identify as being distributors of fentanyl pills where there is simply no current felony charge to address that particular action. I think Mr. Schwartzer spoke to a lot of those. What this may ultimately look like is something that falls squarely within the purview of the Department of Sentencing Policy and the Nevada Sentencing Commission to look at individuals who are housed within our correctional facilities. That Commission currently does that work and has data about individuals who are housed. I believe we may have some of that data with respect to fentanyl pieces and we could, of course, always keep an eye on what that looks like.

When I say to the extent that capacity is available, there are times where it may take a day or two to transfer someone. If they are in a rural part of the state, that may take a little bit longer in terms of transfer, or if they are going to take a larger group from a more populous county, like Clark County, that could take maybe a couple of days. Sometimes it happens very quickly. I would leave any additional commentary on that piece to the Department of Public Safety to talk about. I do not think at this point there is a concern about capacity, and I do think there is currently, within the Department of Sentencing Policy, the ability to look at that and to be able to provide any information on current capacity in the Department of Corrections and what that looks like.

Attorney General Ford:

Madam Chair, I failed to indicate that my chief of prosecutions, Alissa English, is here as well to answer any questions to the extent we have any.

Chair Miller:

Thank you for that, and you are more than welcome to call them or anyone that is here to answer questions for you at any time.

Assemblywoman La Rue Hatch:

Attorney General Ford, I appreciated that you referenced the cocaine epidemic and that we do not want to repeat the mistakes of the failed war on drugs, and I agree with you. I think that we have the benefit of decades of research on those policies to inform our actions today. I heard a lot in this presentation of the dangers of fentanyl and I do not think any of us disagree on that, but I have not heard a whole lot on how this specifically will prevent overdose and will lower drug use. I just wondered if you could speak to what peer-reviewed studies or objective evidence you have that increasing penalties and incarceration rates will decrease drug use and overdose deaths.

Attorney General Ford:

I will not be able to cite to you a peer-review study that says taking traffickers off the street will lower drug use. I think most folks recognize the fact that those who are selling these drugs, if we remove them, we have less of a likelihood that they are going to be selling these drugs. What this bill is attempting to do is to go after the manufacturers and distributors, the traffickers of this drug, with an understanding that there are some who may be users of this drug, and we are attempting to figure out ways to ensure they are not caught in this net. This is not a possession bill; it is a trafficking bill that goes after those who are having more pills on them than would generally be considered for personal use. Again, while I will not be able to recite it for you, Dr. Terry Kerns in our office may be able to provide you with that information. We can follow up off the record in that regard. But I think as a general matter, it is common knowledge that if you remove a trafficker, then you are less likely to have that trafficker being able to distribute those drugs.

Assemblywoman Hardy:

I, too, agree going after people who are intentionally distributing, manufacturing, and selling, that is what we are trying to get at, because I think that is the root of the problem. How are these drugs getting in here and who is responsible? That is what we are trying to get. This follows along with what my colleague just asked about possession. You mentioned trafficking is weight plus possession. Correct? Possession is a part of it, and I see in the amendment [[Exhibit C](#)], you increase the number of grams from the original bill. I am trying to understand, we have got the people who are doing this in a business, we have got addicts, and we have some users who are experimenting or trying drugs, which I wish people would not do that at all. But it is the reality. Then you talked about the number of pills that people would have that are trafficking. I am just trying to understand these three different areas as I see it, and I am trying to understand the possession and that we are not catching people up who are just experimenting. Could you talk a little bit about that so that we are not charging people with felonies, and maybe getting them help and treatment, as you also mentioned in your presentation?

Attorney General Ford:

Therein lies the question. How best to walk this line? My conversations with certain advocates in the recovery community have indicated to me, for example, that someone having 14 grams is very unlikely to be having that simply for personal use. Four grams, possibly personal use; 4 to 14 grams, possibly personal use; but typically speaking, at 14 grams we are talking about 140 pills. So this is an effort and compromise, honestly, trying to figure out how you determine what level is necessary and appropriate to address the trafficking, keeping in mind the lethality of this particular drug. It is not like cocaine and methamphetamines and others, and so you cannot base your analysis on those types of drugs. Is there a guarantee that an addict or user will not get caught up in this? Absolutely not, no one can guarantee that.

I would venture to bet that no one would guarantee that really about any law that you promulgate in this particular building, that there will not be some unintended consequence. But that is the purpose of the discussion that has been going on for 101 days over this bill,

trying to find out what that balance is. We think we have hit it. We think we have included into it certain components that will assist those who are in prison right now battling this drug addiction through the medication-assisted treatment. I got that idea from the recovery community and added it to the bill. We are absolutely open to, and amenable to, and in fact accommodating a lot of these requests and concerns that others are giving us. But I think again, as I indicated at the end of my last testimony, there are certain things where simply, frankly, even with my friends, I am not agreeing this time. There are disagreements, and reasonable minds can disagree, and it is incumbent upon the decision-makers to determine where we are going to land on this, and I recognize and appreciate that.

Senator Cannizzaro:

I think that is absolutely the discussion that we have been having. I think part of what is helpful in hearing from someone like Mr. Schwartz who works on these cases—and I am sure Ms. Engler would provide similar commentary—is when you are talking about something even like 4 grams, which he mentioned was in a case—40 pills—people are overdosing if they are using one, maybe two; maybe it is a half, maybe three or four, if there is a lot. But in most of these circumstances that is not what we are encountering in the field. I think also that is what we are trying to get at. There is a level that when you possess that particular amount, it is not something that you are doing for personal use.

I think to the Attorney General's point, we have murder statutes. Sometimes someone is killed in self-defense, and a person is probably going to get charged with murder—and we are going to talk about self-defense. You cannot say that we would just get rid of murder statutes because someone might have killed someone in self-defense. Those are discussions that happen. That is what the criminal justice system that this Committee has a lot of discussions about is designed to be able to encounter. Even though we are writing laws in very precise terms, there is still discretion and conversations that happen as a part of that process. I think that cannot be overlooked, and that is important for this bill. Just like any bill before this Committee, within that system, there is room for a lot of conversations to help ferret out where there may be that outlier case or circumstance and those particular facts. It is designed to do that in a variety of ways. Madam Chair, I do believe that Lieutenant Chio at Grant Sawyer in Las Vegas may have some additional answers to that question.

Nathan Chio, Lieutenant, Criminal Intelligence Section, Las Vegas Metropolitan Police Department:

I have been the leader of the narcotics section for approximately a year and a half. During the time that I have been there, we have never seen user amounts in excess of at the most 20 pills. In fact, most of the user amounts that we see are between 3 and 8 pills. Speaking for the Las Vegas Metropolitan Police Department, we do not target users with existing laws. In fact, we have several programs that we use to divert users of illicit substances outside of the criminal justice system into different areas and different treatment programs. That includes our Law Enforcement Intervention for Mental Health and Addiction (LIMA) program, where when our officers encounter addicts or users with small amounts of drugs, they do not arrest them, they get them help, they get them to a facility where they can detox, and they enter into the LIMA program. We have great success in something like that.

From a law enforcement, narcotics section standpoint, we are after the traffickers, and we are in full support of this bill. I think one of the contacts I would like to relate to this Committee is that the traditional way that we have always measured drugs is by weight, by grams. About a year and a half ago, the national HIDTA Group started measuring, because of the different effects of the drugs, by dosage units. To put it in context, right now under our current trafficking laws of 100 grams of methamphetamine, which is our leading cause of overdose deaths, followed closely by fentanyl, there are 970 doses of methamphetamine in 100 grams for the trafficking statute; there are 71,428 doses of fentanyl in 100 grams. That is a drastic discrepancy that needs to be addressed. I think Attorney General Ford addressed earlier in his comments that Justice Hardesty said that we would have to reevaluate these weights, and because of the unique dangers to the community of fentanyl, we fully support this bill. I hope that gives you some context on what is a "user amount" and what we are actually trying to target with this bill.

Assemblywoman Cohen:

I want to expound a little more on my colleague's question. I refer to section 1, the language "delivers or brings," and in section 7, it is "delivering." What if we have a situation where, and as Lieutenant Choi said, the user usually has 3 to 8 pills—but what if we are talking about more pills? Because we have someone who is going to be at a party and they are not selling to their friends, but they are bringing it to the party. Now we have someone "bringing" 20 pills to their friends, "delivering." Are they now considered a trafficker under these two bills? Are they going to be subject to the terms of these two bills?

Senator Cannizzaro:

First and foremost, I think we have to start from the beginning of where someone is getting this number of fentanyl-laced pills or whatever to bring to a party to distribute to a whole bunch of people who are at that party. That is not something that you encounter like you went to the 7-11 and picked up a six-pack of beer and are bringing it to your friends. That is not something that you just get at the store, that you have sitting around your house, or that you are going to bring your parents' stash of alcohol to a party. Someone would have to find an individual who is distributing even larger amounts of that in order to obtain a very large number of pills to bring to a party to distribute once you start getting into these levels.

When you talk about "deliver" or "bring," I would note that first, in our current trafficking statutes, that language is consistent. If we are talking about the current statute, that is 100 grams; it includes "delivers or brings." That is true for every place within NRS Chapter 453 that you are going to see language for trafficking. The "delivers or brings" is part of that. These bills are consistent with current Nevada law in the language of "deliver" or "bring." If you are someone who has managed to find and to purchase and to then decide to bring a whole bunch of those pills, I guess not for profit, to a party to distribute to many individuals, then yes, you would fall under the provisions of these chapters. Again, I think the important piece of this is that would be an extremely rare circumstance.

I think every case that you ever encounter within the criminal justice system comes with its own facts and circumstances. That is the job of the individuals who work within that system to take into account if there were a unique circumstance like that where someone is delivering or bringing a trafficking-level amount of drugs into a party and distributing it to other individuals, to be able to work out what that might look like if they were arrested and charged for that. But certainly, to be able to obtain that level, and then bring it somewhere, and then distribute it to other individuals, would they potentially fall under this bill? Yes, if they had that amount, certainly. Does that mean that is the end of the discussion? No. Do I think that is a hypothetical circumstance that we are going to see run rampant through our communities? No. That would be extremely rare, I believe. That would be true in any scenario when you are talking about trafficking in controlled substances. It would just be extremely rare for that to be the case. But if it were, there are places to have that discussion. If it fell within those particular amounts and that level, then yes, they would fall under the provisions of this bill, just like if they fell under current law, that "deliver" or "bring" language that you are discussing, Assemblywoman Cohen, is part of the current trafficking statutes.

Michael Schwartzer:

To your hypothetical scenario of 20 pills, quite frankly, 20 pills would not fall under the statute. Twenty pills would be much less than 4 grams in Senator Cannizzaro's bill. Even under that hypothetical, that individual would not be charged for trafficking, even though it could lead to other things such as possible sale charges based on the current sale language, and obviously, if someone overdoses and dies, we can possibly charge someone under the statutes regarding that. But that level of 20 pills is still not, quite frankly, trafficking weight. Under this proposed bill, you would have to get closer to 40 pills. In fact, 40 pills seems to be the amount that it usually takes to get to those 4 grams. Like I mentioned, the middle school case in which we had an eighth-grader bring about 15 pills to school in which an eighth-grader passed away, and three of them ended up in the hospital, that would not be trafficking weight; but it shows you the damage that even that small amount can do when it is passed around, even if it is not sold, but just passed around to friends. You would still need a significant number of pills, which would be a more significant amount of money to bring to the party in order to get to a trafficking level.

Assemblywoman Cohen:

I appreciate that from all of you. I do not do drugs; I am middle-aged, old, and boring, but I do not think it is that rare, especially beyond the fact of Vegas, baby, and all that stuff. I think people have parties and people get wrapped up in stuff and want to experiment and try things. I do not think 20 pills for a party with a group of friends, especially ones coming to town to Las Vegas, would be that unusual. I will leave it at that.

Chair Miller:

I would follow up on that question, but not in the scenario of partying, because people are not bringing 20 or 40 pills of straight fentanyl—I am assuming we are talking about pills of other sorts that could be mixed or have some derivative of fentanyl. We know that fentanyl is also prescribed for medicinal use. We also know with all medication—we have people that do

not have health insurance or health insurance that does not cover what is necessary—that when this is of medicinal use, these are actually pretty expensive prescriptions. I know that fentanyl patches are often prescribed to people. We know people share all kinds of prescriptions. What about in that case? What happens then, someone sharing a prescription?

Senator Cannizzaro:

When it comes to medicinal fentanyl use, I would note that as we are talking about how this is presenting in our communities and with the families who are affected by this, it is not presenting as someone who is prescribed a fentanyl patch or might have some medication that could contain fentanyl that is then making its way into our communities. We are talking about illicitly manufactured fentanyl, and in the case of these particular bills, the language refers to illicitly manufactured fentanyl. This is not medical-grade fentanyl. Medical-grade fentanyl is currently covered under *Nevada Revised Statutes* as a schedule II substance. It is currently addressed in a variety of fashions in that way. Certainly, there is no law that this Legislature in any committee, in any chapter of NRS, is going to pass that is going to prevent every single circumstance of every single thing that can be addressed. If we are trying to do that, this job is not going to accomplish that. I can say after several sessions that is not possible. But what we can say is that there are current statutes that address the schedule II substance.

What we are seeing in our communities with respect to the fentanyl epidemic is not medical-grade fentanyl. Certainly, there are those prescriptions. I think to your point, Madam Chair, they are very expensive, and many of them are administered within a hospital or medical facility setting. I will offer to this Committee that is something that I have experienced but within a hospital setting, because that is where they are dealing with this particular substance. It is not something that you would encounter on a regular basis. This bill deals with illicit.

Chair Miller:

If it is medical-grade fentanyl—again, fentanyl patches are pretty common—then it will not become an illicit drug, or an illicit sale, or trafficking, or transfer when it is shared or sold to someone else?

Senator Cannizzaro:

Under the language of this particular bill, it would be illicitly manufactured fentanyl, a derivative fentanyl, or mixture of fentanyl. Something like a fentanyl patch would still, I believe, fall under schedule II and would be treated differently than what we are putting into these particular bills for that illicitly manufactured fentanyl. I think that is a different circumstance than what we are trying to address or would be addressed with the language in this bill because of that illicitly manufactured piece.

Assemblywoman Gallant:

I can hear you are both really concerned about the catastrophic harm that fentanyl is doing in our community. I am sure you are both tired, like I am, hearing on the news of all these deaths. I do appreciate the education. I had no idea that 2 milligrams of fentanyl could

possibly kill someone. In rough math, and the way I kind of work, it is like we are not talking about the fentanyl as we have talked about it. It is the cause of the fentanyl. Because cocaine and other illicit drugs have different effects, when you are talking about a gram of fentanyl, we are talking about the possible death of 500 people. If I do my math right, 4 grams would be 2,000 people. Where did you come up with the benchmark of the 4 grams or the 14 grams? What is the line in the sand? Why that? What is the difference between possible death of 2,000 people versus 3.98 grams, which could be 1,998 deaths? All of these sound awful. Can you help me understand where you came up with that benchmark for that amount?

Attorney General Ford:

As an initial matter, the 4 grams in my initial iteration of this bill was simply reverting back to what we had in the law pre-2019. That was the initial rationale behind doing that. Conversations around 14 grams have evolved because of this concern we have about wrapping into this, users of drugs who may be addicts and who may need assistance. The focus is trafficking, not on the user of the drug. We have possession statutes that deal with mere possession already. This is a trafficking statute. Understanding that there was a difference between mere possession and trafficking, we wanted to make an allowance for those who may get swept into the system, who may not be traffickers, but who would nonetheless fall within the parameters of the bill because they have something on them that is for personal use as opposed to trafficking use. Those are some of the conversations that have taken place over the course of the last 101 days. That is a little bit of insight into the ways in which we have arrived at these numbers.

Nathan Choi:

The 4-gram limit that I proposed to Senator Cannizzaro on this bill came from anecdotal interviews and evidence from our narcotics section with our HIDTA partners where we never saw users with more than 20 pills at a time. We felt to be conservative, we would double that amount which ends up at the 4-gram amount to ensure that we do not capture the users in this bill, that we are strictly going after the traffickers. That was some of the thought process behind the 4 grams that we proposed to Senator Cannizzaro.

Chair Miller:

We are basing this on anecdotal experiences. Can you share how many of these anecdotal experiences?

Nathan Choi:

These were experiences that I had personally leading the narcotics section, talking with patrol officers within the Las Vegas Metropolitan Police Department; talking with people at the jails; talking with addicts, victims, and overdoses; where they, as Mr. Schwartz said, would buy 3 to 5 pills at a time. We just never saw that amount, 40 pills or higher, in the user amounts that we encountered.

Chair Miller:

When you said that it was based on anecdotal experiences, what is a rough estimate of how many?

Nathan Choi:

Collectively over a year of experience talking with the two street crime sergeants with the different area commands, a very conservative estimate would have to be a couple hundred encounters with drug users.

Chair Miller:

Because it is anecdotal and just what has been seen—and these are not pills of pure fentanyl, these are mixed—so even in someone's drug use or pill use, they could have different types of pills. Is it possible that is just what they have at the time of arrest or overdose, that they had more pills, but that is just what they had at the time?

Nathan Choi:

I think anything is possible, ma'am. I can just tell you what I have seen firsthand or what I have learned during the interviews that I or my detectives and sergeants have conducted. What we are seeing is the users—and the user amounts—buy 3 pills, 5 pills a day. Depending on their tolerance—because as with any drug, they build up a tolerance of this—they may get up to maybe 10, 15 pills. We have not seen, at least in my experience and the people I have talked to, anything over the 20-pill mark.

Assemblywoman Summers-Armstrong:

At the beginning of your presentation, Attorney General Ford, you spoke of recovery and money from the opioid epidemic which, to clarify, represented about 776 billion pills that were distributed, according to a *Washington Post* article I had read. That is how many opioid pills were produced by these manufacturers that are paying into this fund and we recovered \$606 million. How much of those dollars that have been recovered by the state have gone into things like upgrading our laboratory, or have gone into activities like consistent drug treatment in jails or in prisons so that we can show a direct line between the things that you are saying in the bill to what we can actually see in our prisons and in our jails and that can address the concerns that are being brought about our inability to test properly?

Attorney General Ford:

You remind me to mention the phrase "qualitative versus quantitative testing." That is a concern and an issue that was raised by those who have concerns with the bill; a very legitimate issue and one that I took to heart, which is why we are very interested in studying the transition from a qualitative approach to testing our drugs to a quantitative approach. I advocate that; I support that. I think it enables us to have a more precise, fairer, and just criminal justice system once we can transition to that. That is going to take time.

Your question, though, relates to monies and how they are spent. Yes, we brought in at this point, and we are not done, \$606 million in opioid settlement funds. Those monies have been distributed both to the state and to municipalities that are member parties to the

One Nevada Agreement on Allocation of Opioid Recoveries based on the proportions and allocations that we have in that particular agreement. Under all those circumstances, there has been a needs assessment conducted for our purposes, the state, to determine the needs that we need to utilize to address and to abate the opioid crisis. Are there needs in treatment? Are there needs in prevention? Are there needs in education? Are there needs in the foster care system? We have people who have lost their lives and their children are now part of the system. Are the needs in our prison system for medication-assisted treatment?

Those determinations have, in fact, been made by the members of the Advisory Committee for a Resilient Nevada (ACRN) on how that money is spent. They are not ivory tower individuals. These are folks who are in the fields working in recovery, social workers, educators, or whatever the case may be, and they are making determinations on how that money is to be spent. Comparably at the municipal levels, generally speaking, they are likewise doing the same thing. They have done the needs assessment and they have created their strategic plan, for lack of a better phrase, on how the monies that are being allocated to them will be spent in their respective communities. I cannot say specifically how those monies are spent. It is not within my purview. Excuse my pun, but I bring home the bacon and put it in their hands. They make the determination on how that money is spent, and I have no say in that regard.

Assemblywoman Summers-Armstrong:

I guess my concern really is, if we bring litigation that purports to offer treatment, if you bring litigation that specifically outlines a weight for prosecution, should we not have the things in place that can then effectuate those things? If we are saying that there is going to be treatment, should not those things be funded and stood up so that folks who need it can get it? And if we are going to specify, I mean, absolutely specify, the weight, then we should have systems in place, and the funding that is coming in from these settlements, in my opinion, should have already been used and we should already have these things in place to delineate that we can measure properly, quantitatively, what we are charging people with so that we know the difference between whether someone is a user, high-level or low-level user, or if they are a distributor.

I think that is the thing that concerns me here. I would love to hear from you how you match that up, because earlier you talked about the war on drugs and some of the wording that I am hearing is really reminiscent. We talked about crack being worse than cocaine, and now we are saying fentanyl is worse than oxycodone and it is worse than methamphetamine. It just sounds very similar.

Attorney General Ford:

Make no mistake about it, I lose sleep over this for that exact reason. It reminds me of the time I grew up during this crack cocaine. Yeah, I get it, one hundred percent, which is why I have taken such an intimate approach to trying to find the right line. I do not know if I am at the right line. I am trying. We have been working in good faith with people who have concerns around these issues; both in law enforcement, who are seeing this on a daily basis, subjecting themselves and putting their lives in danger; but also with those who have been

affected from a family member perspective, from a personal perspective. I get it one hundred percent, Assemblywoman Summers-Armstrong, and I do not disagree that we should utilize funds to move to a quantitative system.

I cannot make anybody do that. That is not within my purview; that is not my lane. I brought home money that can be utilized for that, to be sure, but it is incumbent upon others who make those decisions to determine how that money is spent. I agree, I wish they would go ahead and allocate money that is going to move us to the quantitative system. But even buying the equipment does not alleviate all of the concerns. You still have to be able to train individuals to use that equipment. You still have to be able to hire the personnel. There is more to it than simply being able to buy the equipment.

Medication-assisted treatment is already being utilized in certain jails and prisons. To Sheriff Balaam's credit, they are doing it in Washoe County. I am sure they can tell you the difficulties they had in standing that up and maybe even proceeding. I know I visited Florence McClure Women's Correctional Center less than a month ago. They are attempting to initiate medication-assisted treatment, but they do not have the personnel. There is a lot involved with trying to get these things done. It is not just money, but a lot of it is money. I am kind of soapboxing right now in response because I want you to know I take this seriously. This is not something I take lightly.

Again, this is the reason why we have endeavored so much to be able to include into this bill things that can offset any negative consequences that we are not foreseeing or even predicting at this point, medication-assisted treatment being one of those; adding the study for the quantitative transition; and looking at the affirmative defense. These are all issues that have been brought to us that we are considering in good faith, and we hope that we will arrive at a good place at the end of the day.

Chair Miller:

Attorney General Ford, could you be more specific? You mentioned that you were soapboxing and that this would be different. I guess the real question is, how will this be different from the war on drugs of the eighties?

Attorney General Ford:

I do not know if the war on drugs from the eighties talked about the actual intent that I have. I have expressed my intent out loud. The war on drugs, their intent was a little different than mine. It was three strikes, you are out; it was to make differentiations between crack and cocaine. They were absolutely going after the users. Absolutely. That is not the case here. I cannot be any more specific than that. I have stated what my intent is. This is a trafficking statute. This is not a possession statute. This is not an effort to go after the end user. This is an effort to go after the traffickers, the people who are peddling this mess. This is Teddy; this is Franklin Saint; this is Jerome; these are the individuals from *Snowfall* I mentioned earlier. The point is, I am not going after Wanda, who was the crackhead in *Snowfall*. I have made that clear. That is different than the war on drugs. It is not at all what is being presented right now. Anything said to the contrary is wrong, period, point blank.

Assemblywoman Considine:

I had another question, but I am going to pivot because of what we just talked about. I know I have multiple pills that I take every day and they do not all weigh the same. I am a little concerned that we know how much each pill that may or may not contain fentanyl might weigh and how we do that. I understand—and I may have my facts a little bit wrong—that Colorado may have a lab or is working on a lab that may do what we want to do. I know that it might not be the Attorney General's purview to ask for the lab, but what I do not see is a third bill or something in these bills that says we need funding for training people in order to test for this or that we need funding for a lab or appropriations. Is that something that we are looking at, or is this simply so focused on the trafficking piece that we are not going beyond that? I know that is kind of maybe two questions in one, but I was trying to sneak one in.

Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General:

I can tell you what we know as we have explored that conversation. We had a conversation with the labs this week—they have quarterly lab meetings—and Terry Kerns, who is a registered nurse in our office who works with our SURG committee. She is a bridge between the legal and the medical pieces that happen. Over the last two quarterly lab meetings, we have had them discuss these bills and talk about what that would look like. Right now, it is something that can be looked at and can be studied, but you need a plan to plan.

Essentially with Colorado's legislation which you referenced, they had a plan of how they could get there, and when you read their language, they have a transition and benchmarks in legislation over the course of what will end up being a couple of years' worth of work. We are not sure that our Legislature and how we write bills works that way. The best thing, though, and how we would do it here is to say we need to have a study, we need to have an authoritative body look at this and tell us what it is going to cost, what those certifications look like, what the resources and the training looks like. It is not as easy as flipping a switch. It is not as easy as buying a new computer. It is a completely different system of analysis. I do not think any of us are savvy to that right now. We would really need the labs to let us know what that looks like and then what the realistic expectations are going to be.

It is not going to solve every question that has been asked today. Fentanyl itself has 35 different types of derivatives. When you talk about testing for just one drug, you have to talk about testing for 35 different types of derivatives of one drug. It is very complex. We should look at it, but it is nothing that we can flip a switch on. We really have to be prudent and plan to plan when we talk about that piece.

On the funding piece, if I could just go back to support what Attorney General Ford was saying, our office has been looking at the dollars and then the uses of the dollars. To Attorney General Ford's credit, all of that money outside of attorney fees goes to the Department of Health and Human Services (HHS) for them to abate. We did not keep any of that money for our office. We said, Move it into the purview of the experts at the Department of Health and Human Services and the ACRN committee, to the folks who are going to do the needs assessments. The needs assessment that the state did is 250 pages. It is

a really good needs assessment, and then local counties are doing those needs assessments as well. From that, they have just closed a grant application process. They said from the needs assessment, they did an open period for grants and the solicitation of grants. That grant period has just closed and they are looking at those grants. We will know shortly, very specifically, the good work that those programs are going to do. I think what we are trying to figure out is how some of that money fits into the needs assessment. That needs assessment talks about laboratory work; talks about issues around criminal justice; and being able to understand better what is in these drugs.

The DEA does have some information. We can try to submit it to the Committee, but the DEA's information and the slide deck that we have has logos and such that might run afoul of copyright. We can see, but that is where you will see that the DEA said that, in general, those counterfeit fentanyl pills are typically 2 milligrams of fentanyl, and then other things in there, Tylenol filler and such like that. Other folks can speak to that. If we could get those slide decks to you formally or informally without violating copyright law and Legislative Counsel Bureau policy, we would be happy to.

Assemblywoman Considine:

My worry, especially as an attorney, and I really understand your intent, but when we do not know things like how much does a pill weigh if somebody laces my Tylenol—which has actually been done in the past in this country—which is going to weigh potentially more than some other pills, although the intent might be for traffickers, the way that some of this is worded will be taken by law enforcement to potentially make traffickers out of users and addicts. I know that I may or may not be the only one who is worried about the way this is written and how it can be used, as opposed to the intent.

Chair Miller:

I think many of us support the idea that this is actually a health and human services issue, a medical issue. With all this money being directed to HHS or given to HHS, has any of it been requested or directed to go into these types of services, to go into the testing, to go into the laboratories? Because HHS also sounds like the appropriate place for this to be housed.

Teresa Benitez-Thompson:

That grant period has recently closed. They are their own system. We do not have jurisdiction over them. They will be letting all of us in the community know what grants they approve and they accept. That piece is coming. The dollars flow in, and we have a great chart that I can submit to the Committee about when dollars are flowing in from different settlements. It is not one big bucket that has landed at once. Per the One Nevada Agreement, it comes in over a set number of years and obviously, as Attorney General Ford wins and is successful in these additional settlements, that dollar amount grows, but they still fall into the same format of the One Nevada Agreement that you folks can read to see how those dollars are structured.

Chair Miller:

Can you tell us which dollars and when we will be purchasing the equipment and setting up the laboratory then?

Teresa Benitez-Thompson:

I think to the point said earlier, someone would have to put the grant in to request for that to happen.

Chair Miller:

So, there is no plan for a laboratory or for the equipment right now?

Teresa Benitez-Thompson:

The State of Nevada, this body, has never made a policy decision about it.

Chair Miller:

So, the question then is, why not? Why was it not included in part of this bill?

Teresa Benitez-Thompson:

In legislative history? We are proposing the study as being included in this bill, but I think there is a lot of history there. It is not the first time the conversation has happened.

Senator Cannizzaro:

I will add to this—and I can get you some additional information—the Senate Committee on Finance and the Assembly Committee on Ways and Means have been discussing this as part of many of our capital improvement projects. I would note that yes, there is money in this state, there is money coming in for a variety of different things. What I will note from the budgeting standpoint is that we have incredible needs in this state. We have incredible needs for education. We have incredible needs for state workforce. We have incredible needs for infrastructure upgrades. We have incredible needs in health and human services for a variety of things, not just a state lab or what that lab may or may not be able to do. We are talking about things like funding for foster care and for pre-K and for making sure that we can still have elderly individuals be able to get access to care. We are talking about a variety of needs that this state has, and so even though we have increased revenues in this state, or we may be taking in some settlement money, there are many, many needs.

We try our best in the Legislature, within our committees, to balance those needs and to send resources where they need to be. What we have had discussions about in particular, in the Senate Finance Committee, and the Assembly Committee on Ways and Means Subcommittee on K-12/Higher Education/CIP, and within the full Senate Committee on Finance and Assembly Committee on Ways and Means, is what it would take for this state to have a state laboratory. It is not something that can simply be written into this bill to create a state laboratory. We are just going to find all these funds and it is going to happen and this is how it is going to go. We have had that conversation about putting together a state

laboratory. There are currently decision units that are part of the budgeting process for talking about building a state laboratory, but it is more complex than just, Here is some money, now go test all of these things.

I think what this bill is seeking to do is to provide some law enforcement tools. There is a recognition that we are not trying to target end users. There are pieces of these bills that deal with medication-assisted treatment so that some of those dollars can be used for those programs when they are available and when we have them. I think that is important.

To the point that you made, Madam Chair, about this being a health and human services issue, that is a recognition, and that is different about this bill, different than other bills I have seen in my time in this building that talk about criminal justice policy and issues related to drug use; even when we passed Assembly Bill 236 of the 80th Session and said, Look, these weights are too low, they are too low, let us pick a different number. There is no recognition or anything that accompanied that with, Hey, let us build a lab and here is how this money is going to be used and here are some other programs. I think there has to be a recognition that there are pieces of these bills to keep Good Samaritan language in, to put together a study so that we can actually figure out how you could get a state laboratory, to not only do what it is that we would want a state laboratory to do in terms of testing, but also to be able to accomplish the more complex testing that Chief of Staff Benitez-Thompson talked about with respect to fentanyl and the many derivatives that come as a result of that. I think that study is a good and important piece. I also think that with the medication-assisted treatment pieces, you are seeing that recognition that we are trying to find some compromise.

With respect to state labs and why it is that the Senate Committee on Finance and Assembly Committee on Ways and Means did not just come up with, Here is a whole bucket of money and here is how we are going to use it, I think it is because that is part of a very large conversation in terms of the state budget and how it is that we are spending those resources. We have had conversations about what a state lab might look like, what resources we may need, what infrastructure we may have to build, that have been part of our capital improvement project conversations and what we are putting into the budget. I am sure all the members on this Committee will see that is part of a final budget. I would encourage you to go back and watch that conversation in that subcommittee because it is much more complex than adding into bills like Senate Bill 35 (1st Reprint) or Senate Bill 343 (1st Reprint) to simply build a lab that is going to be able to do all of these things.

I think there is a recognition across the board that we need better infrastructure, that we need the capacity to test, and then building that capacity out for something that is more complex like fentanyl. That is not the same as the testing for methamphetamine or for cocaine or whatever because of the derivatives and because of how it is showing up. I think the study, to the Chief of Staff's point, and then also you are seeing that as a recognition in Colorado, they did not just jump to, Here is a lab and here is how we are going to do it. They were trying to figure out how to do that, as well, and put that into some legislation. Those things

are all moving in this building, maybe not in these two bills, but I think the study is the piece that would move in these two bills to help facilitate that and give us the knowledge we need in order to accomplish that.

Chair Miller:

That is interesting, because I agree studies are necessary before to give us the information to proceed. The intent of the original question from one of my colleagues is kind of the cart and the horse. We are going to do this, but yet we do not have the infrastructure. Senator Cannizzaro, I appreciate and understand all the different needs we have in the state when it comes to budgeting, but it seems, if this was such the priority as you are presenting today of this has to be done, this needs to be done, yet it seems that financially, at least in those committees, it may not be a priority. I guess there is kind of a conflict there. If this was such a priority, then I would think it would be prioritized there as well. I am not speaking for or asking you to speak for what is going on in those committees, but when you are listing all these other things—education, health care, our infrastructure, and everything like that—where would you rank this issue compared to those?

Senator Cannizzaro:

When I am talking about the conversation, it is, There is all this money, why do we not just do it and why is it not in this bill? When we are talking about all this money and all these things and what we have to do, my point is that it is not that there is one particular thing that is ever the most important thing that we have to do. I think there are a number of facets of this that have to be considered. I think coming off the heels of a pandemic, the state has some very acute needs that need to be addressed from a financial aspect as well, to address all of those pieces of the various things in the budget, which I mentioned. This is obviously an important piece of legislation because what we are seeing in our communities is an increase in fentanyl use and an increase in deaths from that. That is not something I believe is in debate at all. I think we have to do something.

When you hear that law enforcement is encountering individuals with 100 pills and that does not qualify for trafficking, with 40 pills does not qualify for trafficking, this bill is an attempt to give some tools to law enforcement to go after those individuals. I understand there are pills that weigh different amounts, but what we are not talking about in this bill, and what is already current statute, is that possession of fentanyl—even in illicit form for a couple of pills—is already illegal. That is already a category E felony in the state. It is subject to mandatory diversion, but that is already illegal in this state. So that is not what this bill is doing. What this bill is doing is saying—and this is something that is not uncommon, again, for this Committee or for this Legislature—that when you possess a controlled substance in a particular amount, we recognize and have recognized historically and do recognize under the current law, even under the amendments made to NRS in A.B. 236 of the 80th Session, that when you possess a certain amount, you are not possessing that for personal use, you are possessing that because you are distributing it. This is an attempt to get at that, and we can have a debate about what the proper weights are and what that is.

Currently in Nevada, when we test for an illicit substance, let us say it is methamphetamine, we are testing to see if the presence of methamphetamine is there, but there may be other things in that particular substance. When we are testing for cocaine, there may be other things in that particular substance, but we are testing to see if cocaine exists. That is how current testing happens in the state of Nevada. To do something like pure fentanyl, which we can have a discussion about—again, you are not seeing pure fentanyl out in our communities, that is not what is being distributed, that is not what we are facing. In order to do that, there still has to be the infrastructure to be able to process that in a lab. Nevada does not have a state lab that can do that.

In fact, we do not have state labs at this point where we can even process all of our own things, and that is the conversation that is happening in the Senate Committee on Finance and the Assembly Committee on Ways and Means. There is a request for how we can get together a state lab, not to do pure fentanyl testing, but to just be able to do testing generally. That is an important piece, but we still had a lot of questions on whether they were going to be able to build it. How much was that going to cost? When we are talking about dollars, where are we going to spend those? How long until it is up and operational? How much capacity would they be able to do depending on where all the evidence is coming from in all of our counties? I do not think it is as simplistic as where does this rank in terms of the entirety of the state budget in priorities or where are we putting this money.

I think there is a recognition here that we need a better understanding of what we would need in order to be able to test for pure fentanyl; also, a recognition that this bill is tackling something that we recognize, again as a policy here in Nevada, that when you possess certain controlled substances in a certain amount, that is not for personal use. That is what we are trying to give the tool to law enforcement to be able to use.

Chair Miller:

The concern continues to be that we do not have the testing, we do not have the ability, and yet we will be sending people to trial for possible incarceration without that proof. I am not sure how that even stands up in court, but we will move on. We have people who have many additional questions.

Assemblywoman Hansen:

Certainly, it is not lost on us that your intentions are to really deal with the scourge that we all are distressed about. A lot of my concerns have just been addressed. I really have had some issue with this testing portion; if we have a line in the sand and we are trying to measure to get to that line, but we do not know how we are going to get there yet. With testing, I am a little uncomfortable trying to make that claim that it is 4 grams when it is a derivative and we do not really know how much we have. I will pivot because my main issue was with the testing. In S.B. 343 (R1), by comparison, it was in the penalty portion in section 1, the 4 to 14 grams being a category B, but also it is a category B in S.B. 35 (R1) for 14 to 28 grams. I was wondering, why the same penalty when there is quite a jump in the grams?

Senator Cannizzaro:

The penalties are not the same. Within NRS 193.130 there is an increased underlying sentence for category B felonies. There is a default for category B felonies, but category B felonies across the *Nevada Revised Statutes* contain different penalties. For example, a category B felony for robbery is 2 to 15 years. A category B felony for burglary is 1 to 10 years. I think it is less the particular category. In these two bills, it starts with a 1 to 6 year penalty for the 4 to 14 grams. Then the 14 to 28 grams has a higher underlying potential sentence that someone could receive. It is not the same penalty; it is graduated. They are all category B felonies, which again, category B felonies are not necessarily consistent in what the underlying potential sentence or ramifications could be. That is true across the *Nevada Revised Statutes*.

Assemblywoman Hansen:

Thank you for reminding me of that. You talk about getting to the source. You are not going after addicts, and I believe that is your intention. But what we all probably know is, we are over here at the bottom of the cliff trying to catch and deal with the absolute carnage that we are seeing from this fentanyl crisis and drugs in general. But the source, according to the DEA, is coming from China through our southern border, and we are just going to be here dealing with this, because we need the feds to do their job. It was more of a comment.

I feel for you; I feel for us because we are not solving this problem. We might incarcerate people who should not be incarcerated because we are trying to desperately find solutions to this problem, but yet here in the state of Nevada, we cannot fix what is federally an absolute crisis at this moment in time and is having a detrimental effect on so many families.

Attorney General Ford:

I appreciate your comments about it being more than a Nevada state problem. I had a conversation with Madam Vice President last month about a joint effort with the federal government in our state and other attorneys general across the nation to try to address this holistically. It is not something that is isolated to a conversation here. Madam Vice President and the current administration are entirely dedicated to trying to address this as well. I can update you as things progress in that regard. Rest assured it is on the radar, and beyond being on the radar, people are doing things about it at the federal level as well.

Chair Miller:

I will not ask my question regarding the federal level. I want to make sure that all members have a chance for their questions. What I will ask is that we try to keep our responses as concise as possible because we still have a number of questions. I know there are people who are waiting patiently for testimony, but it is so imperative that we get as much work through as we possibly can.

Assemblyman Orentlicher:

Thank you both for your commitment to addressing this serious problem. I want to come back to your distinction between Jerome and colleagues on the one hand and Wanda on the other. Your desire to make this a trafficking statute and the concerns you have already heard

about, are we getting the users because we have the possession as a ground, you could just say, People who manufacture, deliver, bring, sell, et cetera, and that is a trafficking statute. Adding possession creates the risk of error; you recognize that once we add that in, we might catch up the Wandas, and I know that is not your intent, but we have to go with the language. My concern is we are balancing risk severity. You are worried about the person who has 200 pills. What else could they have them for other than they are trafficking? But all you have to do is prove that they are traffickers without the possession. I gather your concern is it is a matter of proof. How am I going to demonstrate that they are really selling or delivering or bringing or manufacturing? You want to just say there is no other explanation. You have to do some extra step. I do not know how hard it is for you to do that extra step, how many people you think you are going to lose of those people who have 200 pills and you cannot possibly show that they are manufacturing, selling, delivering, or bringing. That is one risk of error.

The other risk of error that we have talked about—I understand if it is pure fentanyl in 200 pills and what that means—is the person who has 4 grams of heroin or methamphetamine or some other drug that has trace amounts of fentanyl, and they will be possessing that and fall within this statute—all those people who are not distributing fentanyl, but they have 4 grams because all you can measure is the total weight of the substance. They have 4 grams of heroin, and you can prosecute them under this. That is the other risk of error.

Normally, we say, Better to let ten guilty people go than convict one innocent person. I am not sure, the way you have drafted this, that we have the right balance and the risks of error. There are going to be too many Wandas caught, and how many of those Jeromes are we going to lose that you cannot really show that extra piece of proof beyond mere possession that they really are manufacturing or selling? Can you talk about why you are worried about your seeing the need for this possession in this term in the statute?

Attorney General Ford:

I appreciate the question and the analogies. It makes perfect sense to me. As a reminder, trafficking statutes, all of them in NRS, have possession as an element. Trafficking is possession of a particular controlled substance at a particular amount. That is the definition of trafficking; it is not mere possession. If you remove the element of possession from the trafficking statute, you no longer have a trafficking statute. You have something else, but it is not a trafficking statute. That is one of the reasons why it is so important for us to maintain the consistency. One of the reasons it is important is to maintain the consistency of our trafficking statutes across the NRS. I have spoken with some district attorneys here who say to me that if we remove possession, we might as well tell the cartels, Ship your drugs through Nevada, because possession does not count. If you remove possession from the trafficking statute, you are going to see a higher increase of the presence of these forms of drugs, and probably not just this drug, if we keep following down this particular trail. I have given every thought to this iteration, removing trafficking, I mean, possession,

here. I have had conversations with stakeholders about removing possession and what it looks like. At the end of the day, we just could not remove it because it is part of the trafficking statute.

But you are right, there are risks and errors in every single bit of legislation. I do agree with you from the perspective of, I would rather have ten people guilty than have one innocent person go to jail. Yeah, I hear you and that is why it keeps me up at night. That is part of the conversation. That is part of why we are trying to find the right line, which is why I vehemently push back on those who would claim that my intent is anything other than what I have said, which is attempting to get the trafficker, in trying to find an allowance for the end user or the person who may be addicted to drugs.

Assemblyman Orentlicher:

Thank you for the answer, and I appreciate your concern. I do not know anything about this. I sometimes watch shows like *The Wire*, but I do not know a lot here. The person whom you catch with 200 pills, one possibility is they are just out driving, you stop them for whatever reason, and lo and behold, they have 200 pills and who knows? How do you prove that they are selling them? My guess is there are many other ways you find that person with 200 pills because there is reason to suspect they are selling, and you set up a sting. Again, if that is the way you catch most of these people through a sting kind of thing, you really have other reasons to think they are selling. Taking possession out, you are not going to lose those people. You are going to lose the people who by happenstance, you come across somebody who has 200 pills or maybe there are other things. Do you have a sense of the percentage of people on whom you do not have that evidence that they are selling or doing anything else that would get them under the statute and that you can only get them under possession? What percentage of cases are like that?

Senator Cannizzaro:

I do not know that. I do not know that anybody probably could give you a percentage. What I will say is, again, this is true for how trafficking statutes in the *Nevada Revised Statutes* are currently written. There are also some substances I mentioned in my opening remarks, like GHB, that would fall under that particular statute irrespective of how much you have for trafficking. I think those are two important starting points to keep in mind. When you have someone who has an amount that is significant, and I believe that 4 grams is an amount that is significant, I think there has been some conversation over 4 versus 14 grams. I think certainly there is a lot of agreement that 14 grams is a significant amount of drugs, even pills laced with fentanyl, not pure fentanyl. If you have 4 grams of pure fentanyl, you are going to kill a lot of people. No one is in possession of that, that we are encountering. But when you have possession of a certain amount, it is not for personal use, it is not a user who happens to have a few hundred pills. That is not what is happening. That is not what the evidence shows.

And certainly, things like undercover operations, undercover buys, could result in a charge under a trafficking statute to be sure. But there are so many things, and I do not know if either Mr. Schwartzer or Lieutenant Chio may have some additional comments to add on this

particular part, but it is not that one person is manufacturing them and selling them and distributing them. There is an intentional way in which the chain in order to get those drugs out into the community occurs. You are not always going to have some undercover buy or some informant who is going to be able to go in and purchase and get you that evidence and bring that in.

Oftentimes when you are encountering this, it is somebody who is in possession of an extraordinary amount of controlled substance, and they would fall under trafficking statutes and those are statutes we currently have. This bill is an attempt to acknowledge that fentanyl is different than something like methamphetamine or cocaine, where we are talking about 100 grams when you are getting into those higher-level trafficking pieces, and that is what this bill is really doing. I do not know if either Mr. Schwartz or Mr. Chio had anything else to add in terms of if we can probably quote percentages but something that might be also responsive to your question.

Michael Schwartz:

To piggyback on what Senator Cannizzaro said, what we are seeing in HIDTA and when we are dealing with major drug traffickers, a lot of our stops are car stops in which we might have information from a confidential informant or from another investigation that that individual might have a significant amount of fentanyl or pills they are transporting from point A to point B for whatever drug organization. We do actually have, I cannot tell you percentages, but a significant amount of my caseloads are individuals who are stopped in a vehicle where our K-9 hits and we find hundreds of pills, usually not high-level trafficking and a lot of times not even low-level trafficking under the current statutes, usually lower, usually somewhere between 500 and 800 pills. A significant number of our cases are exactly the scenario you were talking about, which is a car stop where we have a significant amount of pills in the car, but we do not have any sales or anything like that. And these individuals, after they are stopped with that many pills, it is very unlikely we are going to be able to set up a sting to buy pills from them and then get the sale component. I hope that answers your question, sir.

Assemblywoman Mosca:

I know you reference it as a trafficking bill, and I was wondering if it is based on other states or if there are outcomes or evidence of how this has worked in other places?

Attorney General Ford:

It is a trafficking bill by definition, and that is why I reference it as a trafficking bill, because of the elements of the particular crime that we are talking about here. Your question is, what is the experience of other states relative to their trafficking bills as it relates to fentanyl? Is that what you are asking me?

Assemblywoman Mosca:

Yes, and if this was based off of somewhere else or if it is coming from other places?

Attorney General Ford:

It was not based on another state's statute. In fact, it was based on *Nevada Revised Statutes*, the way that we operate in the way that we define trafficking, and it reverts to my initial draft, reverted to the state of the statute pre-2019, so that we can figure out and start addressing this issue from that particular level. It was not based on another state's particular statute.

Assemblywoman Mosca:

Are there other states that have something similar? Have we seen outcomes?

Attorney General Ford:

There are other states that have trafficking statutes of this sort, Colorado being one. This is a nationwide phenomenon where many states are now attempting to address what we are seeing contemporaneous with us. The attorneys general in Massachusetts, Delaware, and Illinois, whom I speak with frequently, are likewise entertaining this issue and who frankly have the same approach that my office has with the criminal justice reform issues, who are likewise toiling with this dilemma. Yes, other states are doing it. I do not necessarily know what the track record looks like because it is happening contemporaneous with what we are doing right now, if that makes sense.

Assemblywoman Newby:

I know we have been talking about fentanyl being in pills in very small amounts, but my understanding is that fentanyl can also be in other drugs, either in marijuana or cocaine or meth, or there can be any number of concentrations. In that situation where there is fentanyl with another drug that is also illegal, when the person is charged, are they going to be charged for the fentanyl portion, or are they going to be charged for the whatever else the other drug is portion, or are they going to be charged for both?

Senator Cannizzaro:

Ms. Engler might be able to answer that question.

Alissa C. Engler, Chief Deputy Attorney General, Criminal Prosecution Division, Office of the Attorney General:

The individual would be charged based on the weight of the drug. They would not be charged with both trafficking in fentanyl and then trafficking in cocaine or methamphetamine. If it contains an illicit fentanyl, they would be charged under the trafficking of fentanyl statute.

Assemblywoman Newby:

So, for the entire weight of whatever that is, correct? If I had a vape pen perhaps with marijuana and it had some fentanyl in it, I would be charged for the weight of that substance regardless of the split between the marijuana and the fentanyl?

Alissa Engler:

Yes, that is correct. It would be on the total weight of the substance, keeping in mind that trafficking in marijuana is also a separate statute. That is separate from other schedule I and schedule II drugs. But if you have fentanyl in the derivative of the compound, it would be charged based on the total weight of the compounds.

Assemblywoman Bilbray-Axelrod:

Anecdotally, my husband was in a coma a few years back and was on the max dose of fentanyl intravenously. I was texting with the doctor to find out what that was, and it was 300 micrograms per hour, which is the equivalent of .0003 grams of fentanyl. I thought that was kind of interesting, and he wrote to me that .0003 grams is a huge dose. Assuming this bill goes forward, and in section 12.3, where you talk about if there is money available to go for prisoners to be part of the medication-assisted treatment, I was just wondering where, to the extent that money is available, would that money be from? Who is paying for that? Then, what does that look like? Will it be wraparound services or counseling services? I think those really go in tandem, just not dealing with getting folks off drugs but actually a more holistic approach. Would that be included in that as well?

Attorney General Ford:

As an aside, that request to include medication-assisted treatment in our jails and prisons came directly from the recovery community advocacy group to me. I added this for that particular reason. This is their language verbatim, what their request was in that regard. I do not purport to be an expert in medication-assisted treatment, so I would not be able to tell you what that entails from a treatment perspective. But to your monetary component, I will say something that I said at the Senate hearing, which is we brought in a lot of money from opioids. A lot of these municipalities have money from opioids. I cannot tell them how to spend that money from opioids, but it seems to me that there is an opportunity to utilize opioid money for this opioid issue in their jails and prisons.

Alternatively, they have other resources they want to utilize from their own particular municipal budgets. I am going to mention Sheriff Balaam again, because he is already doing it. I am not certain where his money comes from. But maybe at some juncture, he may be able to talk about whether there were grants and things he applied for that assisted in that particular regard. What we have endeavored to do through this is to acknowledge the concern about unfunded mandates, so to speak. We are not saying you have to do it, but we are saying that monies are available. We want you to implement medication-assisted treatment in jails and prisons, and that money, in my estimation, is out there. I would hope that they utilize it in the way that this bill is contemplating.

Assemblywoman Hardy:

You mentioned the ACRN and SURG committees. The bill mentions money that is available to help the people that are incarcerated, et cetera, but I am assuming that some of that money somewhere would be used in campaigns to alert the public—This is fentanyl. It could be in any drug. Do not take any drug that somebody offers you because this small amount could kill you—so that people are aware. As you mentioned, a lot of young people especially do

not know how dangerous this is. Is some of that money going towards campaigns to educate people, especially in colleges and other places, to not take any drugs from anybody because you do not know what could be in them?

Attorney General Ford:

The short answer is yes, although I do not make the decision on how ACRN decides to use those monies. The SURG committee, for example, that I do chair, we made recommendations to the ACRN committee on how to use this money, and some of those recommendations were education-based programming; "One pill can kill," for example. That is a program that has been operating in our schools these days letting kids know, Yeah, you think you might know, but one pill can kill. Yes, that money is being utilized, and I suspect that a lot of the needs assessments and the planning that comes out of the needs assessment, likewise, contemplates that money being used for educational programming and purposes as well.

Assemblywoman La Rue Hatch:

I think a lot of my concerns have been shared by my colleagues. I particularly appreciated my colleague mentioning the vape pen because I am a high school teacher and vapes are the scourge of our school, and we can talk about tobacco policy later. But students pass around weed pens sometimes, and at my school, we have had students who have overdosed because there is fentanyl in their vape pen, and we got them treatment. Thankfully, our school police had the appropriate resources and they were fine. However, I am concerned that under this bill, that student will now be a trafficker, and that student who thinks they are passing around a weed vape pen that has a microgram of fentanyl is now going to be incarcerated.

From hearing all of this, I hear we cannot upgrade our labs because it requires in-depth study, thought, and all of this planning; and we cannot put funding into the bill because there are so many other priorities to fund; we do not have money for treatment; we do not have money for testing strips; and we do not have money for all this stuff. I am just wondering why our first step—instead of studying the labs, instead of treatment, instead of all these other things—is incarceration and then later we will come back and think in-depth about these other things.

Attorney General Ford:

I would just offer a quick response and turn the microphone over to others who want to respond. The first response is not incarceration; the first response is incarcerating traffickers. We need to be specific about what the first response for these bills are. The first response is not to incarcerate your student as a user. It is to incarcerate the trafficker who is peddling this mess to your students. That is the first response. Pursuing this first response has opened up an opportunity to discuss the needs of labs, for example. That was not a discussion here before. It simply was not. At the public health level, they can utilize labs, but at the criminal justice level, we were not talking about the appropriateness of upgrading labs. I wanted to chime in, in that regard and say the first response is not to incarcerate your student. It is not to incarcerate the end user. It is not to incarcerate Wanda or an addict; it is to incarcerate the trafficker, and that is what this bill endeavors to do.

Alissa Engler:

I probably should have clarified earlier that if we are just talking about a vape pen with marijuana and then having it laced with fentanyl, marijuana is covered under its own statute, which is measured in pounds for trafficking. The amount of marijuana that you would have in a vape pen would not reach the trafficking levels. When we add fentanyl to it, the amount of fentanyl that would have to be in that vape pen would be much larger. You would not get to the trafficking of fentanyl is what I would presume because the amount of fentanyl in there would not reach the 4 grams required under this bill. Secondly, when we are talking about students, they would be juveniles, and so they would not be covered under this bill.

Assemblywoman La Rue Hatch:

I would just like to clarify. Let us say it is not a vape pen; let us say it is a baggie of cocaine and it is 4 grams, which we know an addict can use in a day, and it has fentanyl laced into it. They will be charged under fentanyl, right? Because you said if fentanyl can be detected at all—because we cannot tell how much fentanyl is in it—if it is 4 grams of cocaine and there is fentanyl detected, they will be charged as a trafficker under this, correct?

Alissa Engler:

Yes, that is correct. I just want to point out that, again, when we are talking about if we just have 4 grams of cocaine, which is not necessarily a lethal dose. But when we add fentanyl to that amount of cocaine, that is what makes it so serious and more lethal. And that is what we are trying to address here, that we are not just talking about 4 grams of cocaine; it is 4 grams laced with fentanyl which is killing people, and that is why this is so serious and that is what we are trying to address here.

Assemblywoman La Rue Hatch:

We cannot determine how much is in it. Every speaker today has mentioned that so many of these drugs, the users have no idea it is in the drugs, it is laced in them, it is killing them. Are there protections for those individuals who believe they are buying another substance and who are in fact a victim because they now have fentanyl in the substance that they have? Are there protections for those individuals who do not know that the cocaine or heroin or whatever they have has fentanyl in it even if it is over 4 grams?

Alissa Engler:

So that I can best answer your question, when you mean protections, are you talking about an individual who might purchase a large quantity of drugs from somebody not knowing that the amount is laced with fentanyl? I guess to best answer your question, if you are out there purchasing a large amount of drugs that qualify as trafficking, as we have stated before, the amount that is in your possession is not for personal use. We are labeling these as traffickers versus possessors. Under all the other statutes, under NRS Chapter 453 for possession, there are protections and treatment programs that those individuals can access. But when we are talking specifically about trafficking, we are saying that the amount in their possession is not for personal use.

Senator Cannizzaro:

The other thing that I wanted to touch on with respect to the protections piece, we have been talking and what the public defenders brought to us in the proposed amendments to Senate Bill 343 (1st Reprint) and Senate Bill 35 (1st Reprint) was some language around an affirmative defense. The language they have proposed is different than how other affirmative defenses are handled within the *Nevada Revised Statutes*. We need to change some of that with respect to the request for jury verdict forms or with a specific pattern jury instruction. I also think that language needs to be tightened up, but that is something we are considering as part of an amendment if we can get that language to a point where I think it works.

We are very open to accepting that because I think in the context of different circumstances where someone is mistaken, we can address that with things like that, and you can address that within any particular case, given the particular facts and circumstances. I know I mentioned it earlier, the system is designed to do that because you cannot write a law that is going to get it perfect every single time. You can write a law that is intended to address what is impermissible behavior, and to prescribe penalties for it, but there are always going to be exceptions. I think things like affirmative defenses recognize that. If we can get that language right, we would love to be able to bring an amendment that would satisfy part of your concern, Assemblywoman La Rue Hatch.

The other thing I wanted to note is, under Nevada law for trafficking as it currently exists, if you were to have a sufficient amount of trafficking for cocaine but not all of it was cocaine, you are still going to be charged for trafficking with cocaine. I think that is just as important to keep in mind, that this bill is not doing something different than what is in the *Nevada Revised Statutes* or that is our common practice and protocol. What it is doing is saying that we should change those thresholds because when it comes to fentanyl and how we are encountering it, we are unable to get at individuals who are clearly distributing this out into our communities.

Attorney General Ford:

Madam Chair, I have to go to the Board of Examiners meeting. I will go vote and come back, but may I be excused?

Chair Miller:

Yes, Attorney General Ford, we will be happy to see you back.

Assemblywoman Cohen:

I do not know if it was just because when I was reading this, it was last night and it is that time of session, but can you explain section 3 in both bills, and how this impacts the death penalty? I went through the statutes that it referenced and tried to understand what it was saying and just really could not understand what it was getting at.

Senator Cannizzaro:

I am sure that if I get this incorrect Legal Counsel will be able to correct me. *Nevada Revised Statutes* 453.3385 pertains to current trafficking statutes. Because this relates to that, it is adding it, and that is what you see sort of consistent throughout the bills and the remaining sections is that it is conforming with other language where you are talking about trafficking. Any other statutes that are including that, that this piece would be included in that and would make reference to.

Assemblywoman Cohen:

Can I ask Legal just to explain what is currently done?

Bradley A. Wilkinson, Legal Counsel:

Just to make sure I understand your question, what Senator Cannizzaro stated, what the bill is doing is treating this new offense as other trafficking offenses are treated. We are just including a reference to that statute. That is what is in a lot of the later sections of the bill here. If you are asking about how the underlying section works for the death penalty, it can constitute murder if you provide a substance to a person. In terms of how that works in practicality, the prosecutor from the Clark County District Attorney's Office could probably give you a much better idea of exactly how that works.

Assemblywoman Cohen:

I will ask them offline.

Assemblywoman Considine:

I have a question about constructive possession in both bills and the way that language is written. Hypothetically, you have a functional cocaine addict with a six-figure job, a very professional person who is able to function, and their addiction is 4 or 5 grams of cocaine a day and they are still functional. They are an addict. They are in a car with a friend of theirs and they have 5 grams of cocaine on them and their friend is driving. Now, the driver knows that their friend is a cocaine addict, so you have knowledge but may or may not know that the friend has the cocaine on him. But the person with the cocaine on him is unaware that there is fentanyl in that person's cocaine. They get pulled over for one reason or another, the police find the cocaine, and because it is 5 grams, it is possession if it is cocaine. But for the fentanyl, it is now trafficking.

Under constructive possession, the way this is written, can the driver now be charged as a trafficker, because that is my understanding of what constructive possession is. If you are, for example, driving a car and you are aware that drugs are in the car, you can be charged with constructive possession. I am just taking that one step because that moves from possession to trafficking only because of that fentanyl. This is what I mean by intent and the net and catching that person. I am using a professional person with that cocaine level of addiction as the best-case scenario as opposed to someone else addicted to another drug with that level of addiction in that situation in another part of town.

Alissa Engler:

When we are talking about constructive possession and what a prosecutor would have to prove in order to establish a constructive possession, we have to show that the drugs that are located in the vehicle are immediately and exclusively accessible to the individual and subject to their dominion and control. I would say in that situation, if they are driving in a vehicle and the drugs are located on the passenger and they might not know that it is in there, we would have to show that not only is it accessible to that person inside the pocket of their friend, but that they have dominion and control over that. We would have to prove those elements in order to do that. I do not think in that situation—obviously, it is prosecutorial discretion—we would be charging the driver with the constructive possession of those drugs.

Assemblywoman Considine:

I appreciate that, which is why I wanted to ask that, but there have been cases where that has happened, because it is prosecutorial discretion on that. I wanted the difference between the intent of this bill for traffickers, and then that harkens back to the war on drugs. I have not read the amendment and I can only go by what is in this bill, but I do not know if the amendment does anything like that, because that turns on that one level is possession, one level is trafficking, and then moving out an outer ring.

Senator Cannizzaro:

I think to Ms. Engler's point, you still have to be able to prove all of those elements inasmuch as you are alleging that it is constructive possession. I think that is an important piece to keep in mind. When it comes to possession, and this is true for possession of stolen property or possession of a firearm by someone who is prohibited, it is always actual or constructive possession, but you still have to be able to prove that dominion and control and that knowledge piece of it. I think that is the tough part. But when we talk about possession, and you talk about constructive possession, that is true for any place you might have a crime that involves possession. It is either actual or constructive.

Assemblywoman Summers-Armstrong:

When we look at the penalties that are proposed here and we compare them to our federal schedules, there is a significant difference. Could you speak to why there is such a discrepancy in what the levels are here in this bill that you are proposing as to what the federal schedules are?

Senator Cannizzaro:

I am not familiar with the federal schedules and what those particular limits are. With respect to the penalty pieces in the category B with the escalating possible sentences, which is consistent with what we have had in trafficking statutes within NRS, that is consistent with what has historically been state law, which is why you are seeing those in both my bill and the Attorney General's bill. I think Attorney General Ford mentioned previously when we were talking about weights, this is very similar to what we have seen previously with respect to trafficking weights. This would be consistent with historical Nevada state law, which sometimes differs from the federal law.

Assemblywoman Summers-Armstrong:

For clarity, cocaine, schedule II, a 500- to 4,999-gram mixture or 5 kilograms, is 5 years and not more than 40 years. Fentanyl, which is also schedule II, a 40- to 399-gram mixture is not less than 10 years and not more than life for a first-time offense; if death or serious injury occurs, not less than 20 years or more than life, and the fine of \$10 million. We can go on and on. I can share this with you if you want it. I just think this is a further example from what we have been hearing today and a concern for me that we are outsizing a penalty compared to what we see federally.

We still do not have a way to measure, and it just seems to be a net that is so broad that we are going to get users and people who have serious addiction problems caught up in this, and we have not solved core issues. Why are we seeing so much usage in our communities? We are not talking about it. We are not dealing with help for addicts. We are not going to catch the people who we are really after. I mentioned earlier seven billion pills by these major corporations that are paying the state. These are major distributors; not one of them went to jail; they just wrote a check. I am really concerned that this is not addressing the core issue of addiction. Until I can see how this amendment about affirmative defense and some other things can help safeguard regular people in our community, I am really, really concerned about that, and I would really love to see some effort and the language so that I can make a better decision, because you all know where I represent: 89106, 89108, and 89030. These are neighborhoods that are often heavily policed, and these incidental stops for any and everything, mechanical failures, all this can bring people who have addiction problems, can get them caught up. It really concerns me, and I would like to see a little bit more thought.

Senator Cannizzaro:

I think your concerns are certainly well-heeded by the Attorney General and me in trying to find that balance. With respect to some of those federal schedules and those thresholds, current Nevada law for cocaine is lower than that. Nevada law does not always match what we see in the federal statutes. I think there is an effort to try to work through some of these amendments that have been suggested by the public defender's office to give a little bit more comfort to the Committee in where there may be an affirmative defense that someone can utilize if they end up being someone who is captured by this who is not who we would consider a trafficker. Again, this is an effort to get at individuals who are distributing in our community who have a large amount and that we frankly do not have that tool for.

I do appreciate and understand your concerns, and we have been diligently trying to work through what we can do within this bill and with these amendments to get you something, and hopefully we are going to be able to work some of those out and bring those to the Committee.

Chair Miller:

I hope you understand these concerns are really real. I ran a prisoner reentry program back in 2005. The majority of the people who came through this program who were serviced were people who had spent 20 to 30 years in prison for drugs. Meanwhile, we watch predatory

child molesters walk out of prison in 7 to 8 years. We watched people with manslaughter and homicide walk out in 20 years, but the majority of people, 20 to 30 years for selling drugs. I bet you can guess how many of them were Black men. We have mentioned before, we know the system is different pertaining to who you are and what you can afford, what type of legal defense you can afford. I hope that you wholeheartedly take the concerns that the members here on this dais have expressed.

I would like to thank the members for your deep and diligent study of these bills and your questions in expressing your concerns because, again, no one is saying that the intention is to repeat the war on drugs, the catastrophe that it was. But again, we in this body are also concerned with unintended consequences.

Is there anyone who would like to testify in support?

Darin Balaam, Sheriff, Washoe County:

I am here this morning in support of Senate Bill 343 (1st Reprint). When I first ran for sheriff in 2018, I promised my committee and my community that I would work to attack the opioid crisis in Washoe County. It was one of my highest priorities. Since I took office in 2019, and despite the efforts of starting a detention services unit, developing a certified medication-assisted treatment and opioid treatment program in my correctional facility, beginning a Narcan leave-behind program, a fentanyl strips vending machine in my lobby, and outfitting patrol deputies with Narcan, I have only seen the fentanyl epidemic get worse in my community. I watch as my deputies have responded to incidents of children overdose on this horrific drug. I have listened to family members and personal friends who have been affected by fentanyl overdoses and lethal ones tell me how they wish they could help, but the drug was too powerful to overcome. I have heard that because I run the largest detention facility in northern Nevada, and what happens outside the facility walls eventually penetrates inside. Two out of the three overdose deaths I had in my facility last year were fentanyl-related.

Let me be clear, fentanyl can and sadly is, lethal outside of prescribed usage. I will also be clear. We are not looking for and targeting addicts of this horrific drug. Those individuals we need and must provide services to, and in my detention facility, we currently are doing that. We are looking to target those who are preying upon our communities, those who are knowingly injecting small lethal doses of fentanyl into marijuana and other drugs, and those who are knowingly trafficking fentanyl to vulnerable members of our community. Senate Bill 343 (1st Reprint) is a start, and again, we are getting started and we must start because I challenge you all to speak to the parents of young adults in my community from overdoses and your community and tell them that we did not do anything.

Dan Coverley, Sheriff, Douglas County:

I am also a member of the executive board for the Nevada Sheriffs' and Chiefs' Association. I am here in person today to testify in support of Senate Bill 343 (1st Reprint). I have seen overdoses and deaths increase in northern Nevada, specifically in Douglas County. All of my deputies carry at a minimum three doses of naloxone, commonly referred to as Narcan.

Many times, it takes more than one dose of naloxone to revive an individual who has overdosed. The devastating consequences of these situations on the community, to include the deputies who work for me, can be everlasting. Fentanyl is 50 times more potent than heroin. A lethal dose of fentanyl can be as small as 2 milligrams.

The Douglas County Sheriff's Office is currently buying multi-ounce quantities of fentanyl powder in our undercover operations. Douglas County has seen an increase of over 1,000 percent from 2021 to 2022. In 2021, Douglas County Sheriff's Office seized 1 gram of powdered fentanyl and ten counterfeit fentanyl pills. In 2022, the Douglas County Sheriff's Office seized 1,290 grams of powdered fentanyl. We are predominantly seeing powdered fentanyl in Douglas County as opposed to the pills that have been commonly talked about that you are seeing in Clark County. Overdosing on powdered fentanyl can be extremely easy. In October of last year, I had five deputies who were exposed to powdered fentanyl. All five were administered multiple doses of naloxone and transported and treated at a nearby hospital. If five healthy, young deputies can overdose easily, imagine what being exposed to powdered fentanyl would do to a young child. Thank you for allowing me to show my support for this bill. I want to thank the bill's sponsor and appreciate their efforts to work with law enforcement and other stakeholders.

Chris Crawford, President, Nevada Sheriffs' and Chiefs' Association; and Police Chief, Sparks Police Department:

I am here in person today to testify in support of Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint). I have seen overdoses and deaths dramatically increase in northern Nevada in the past three years. I have observed the devastating consequences of these situations on families, friends, and colleagues. Any legislation to combat this deadly issue at the level of sales, distribution, and trafficking is a must. We owe it to our children and to all citizens of our state to disrupt the flow of illicit fentanyl. An amount of fentanyl no larger than the tip of a pen can be a lethal dose. In 2022, two Washoe County high school students believed they were using pain pills. Those pills were actually fentanyl. Those two young men did not survive. Three years ago, the regional interdiction units within Washoe County, units focusing on trafficking-level offenses, were seizing fentanyl powder in grams per month. Today, they are seizing multiple forms of fentanyl and seizing in tens of pounds per month. I would like to thank the bill sponsors and appreciate their efforts to work with law enforcement and other stakeholders. I appreciate the focus of this bill on disrupting the supply of illicit fentanyl into our communities rather than on the end user.

Washoe County, like so many others in our state, has flooded our community with available Narcan to reduce deaths and yet they are still increasing. Law enforcement is carrying Narcan to save our community members. Three years ago, we utilized on average one dose of Narcan to save a life. Today, we are using three to four doses. The citizens of Sparks, our communities throughout our state, and law enforcement need to have a means to combat this deadly epidemic. Thank you for allowing me to show my support and that of the Nevada Sheriffs' and Chiefs' Association.

Jason Walker, Sergeant, Administrative Division, Legislative Liaison, Washoe County Sheriff's Office:

At the Chair's indulgence, if I could read in some talking points on quantitative versus qualitative as far as the lab standards. I received these points from Brad Taylor, who is our supervising criminalist in the Toxicology Section of the Forensic Science Division of the Washoe County Sheriff's Office.

Industry standard for forensics in the United States is to do qualitative testing due to the way the laws are written. Marijuana is the exception for some states with listed percentages of THC for the identification of marijuana versus hemp, but that is just for one drug. This significantly increased costs and time for those analyses. Again, that is for one substance. Qualitative testing provides quick, clear results. Is there an illegal drug present? Most people can understand the basics of the current process and laws; how much substance is present that we have and what drug is it? Quantitative laws introduce an immediate uncertainty as to how much do I have. This will not and cannot be known for any level of the legal process until full analysis is performed. There will be no reliable preliminary options for this question. Very few people in the drug pipeline from the salesperson to the users know the purity of the drug they have, but they can all be aware of what the drug they have weighs.

I have with me today my daughter, Kiley. I want to make one thing clear about Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint); they are not going after the users. Attorney General Ford made that exact statement when we first started these discussions about the fentanyl bills when we first started at the Legislature. These bills are targeted at the traffickers of illicit fentanyl, and more specifically, combating the insurgents of the blue M30 pills, which is the majority of what we are seeing in Washoe County and the pandemic of overdose deaths that come with it. You may hear emotional testimony from my daughter today about an incident that occurred to her a few years back. I will let her tell her story. I hope by her getting this out in testimony may give her heart a little more room to heal from such a tragic event.

Kiley Walker, Private Citizen, Reno, Nevada:

I am a 23-year-old graduate from the University of Nevada, Reno. I currently work as a phlebotomist in a clinical laboratory at Renown Regional Medical Center. I am here today to ask all of you to support Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint). Three years and 22 days ago, after my shift in the emergency room, I stood outside of my boyfriend's apartment for five agonizing hours to see if my boyfriend was there and/or even alive because he was not responding to my text messages. I called the nonemergency line to have them help me do a wellness check. They came, knocked on the door, and soon left afterwards, requesting me to let them know if he eventually opened the door. He never did. It took a whole community to help me open the door: the apartment's maintenance man, the Reno police officer, his neighbors, and my dad. My dad told me to wait in the car while he covered the police officer on scene to enter the apartment.

I was on the phone with his mom trying to keep her updated, and once I saw the look on everyone's faces, my whole world stopped, and I started to scream. It took everything my dad, Sergeant Jason Walker, had to tell me that the love of my life, Cameron Blayne Davis, was dead. Cameron was a retired cavalry scout in the U.S. Army and he was 21 years old. He passed away from an accidental overdose on an M30 oxycodone pill that was laced with a lethal dose of fentanyl while lying on the couch playing a video game. He had no idea this was going to happen. April 25, 2020, was when my whole world turned upside down.

Still to this day, I struggle with the question, Why? Why did this have to happen? Why could I not have been there to save him? Still to this day, I believe that he is going to walk through the front door as if it never happened. I stand here today to represent my boyfriend Cameron, his family, Leslie, Maddox, Flynt, and Grey Miller, and all the families who have lost loved ones to a controlled substance laced with fentanyl like me. Accidental overdose grief hits completely different than any other. They are unexpected and truly strip the future away from you. Please help prevent this catastrophic event from happening to anyone else.

Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson:

I first want to thank Attorney General Ford and Senator Cannizzaro for bringing these critical pieces of legislation. Illicit fentanyl trafficking impacts every community in our state. The traffickers of fentanyl are preying upon the most vulnerable in our communities such as those suffering from addiction and children. At the City of Henderson, we are trying to put a holistic approach to this that would work with the tools being brought forth in these two bills. One of the ways is using U.S. Department of Justice dollars to launch a pilot program that integrates our law enforcement with mental health professionals. It is called the "Mobile Crisis Intervention Team," and the purpose of this is to try to connect people with treatment and strengthen our partnerships with the mental health system. The City of Henderson is supportive of both S.B. 35 (R1) and S.B. 343 (R1) and urges you to pass this important public policy.

Chair Miller:

Thank you. I have a question for you. Henderson is developing a laboratory, correct?

Mike Cathcart:

Correct. We are applying for grants, and we are doing investment towards putting together a forensics laboratory.

Chair Miller:

And will that forensics laboratory be testing for fentanyl?

Mike Cathcart:

Yes, at the current procedures, I believe in the state, but I can find out what our plans are for the future for you.

Chair Miller:

Yes, please submit that to the Committee because we would like to know when the laboratory will be finished, and what capabilities you will have in order to test for quantifiable amounts of fentanyl when mixed into other drugs.

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers; and Member, Nevada Law Enforcement Coalition:

I am here also because I am a father and a grandfather. Let me just make this clear. I have no goddamn tolerance for people who traffic drugs into the communities that may include my kids and my four grandchildren. I am here simply to express that if you are an addict, you need help, we need to give you help, we owe you help. But if you are a trafficker, if you are somebody who knowingly and intentionally sells, manufactures, delivers, or brings these drugs into this state in the prescribed amounts, we need to change your address to a corrections facility. It is just that simple. Some of you may not like my attitude. I do not care. The bottom line is I have no tolerance for these people who are going to kill. Some of you may be affected. I do not want to be affected. I have grandchildren, so I am here really for them. That is all I have to say. I support both Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint).

I would urge you to consider your families, your friends, and your associates as well. All the things that have been said, we need money. You are right. There are some specifics about the qualifying and the quantifying process, I agree. Let the stakeholders figure that out. But as a simple policy comment, I have no tolerance for traffickers. We need to put them away.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office:

We are in support of both S.B. 35 (R1) and S.B. 343 (R1). I do want to say that this is an important piece of what I would call a comprehensive approach that we are taking in this state to address the illicit fentanyl problem we are having. Attorney General Ford talked about using some of the opioid settlement funds so each community can develop strategies that work for their various communities. That is an important piece, but S.B. 35 (R1) and S.B. 343 (R1) are also an important piece, and we urge their passage.

Beth Schmidt, Director-Police Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

I want to echo what both Mr. McCann and Mr. Jones have said. We support this comprehensive approach. We appreciate both the Attorney General and Senator Cannizzaro for working with us and listening to all parties involved. Again, this is a trafficking bill. We must do something more when it comes to trafficking. We cannot have these families and these children coming before us and talking about their loved ones who died. We can do something, and we should do something. The Las Vegas Metropolitan Police Department is committed to helping people who are addicted. My sheriff has gone on record numerous times about that, and that is why we welcome the piece in this legislation that talks about

medication-assisted treatment. We have addicts; we have people who want help. Our LIMA program is doing that, as Lieutenant Chio talked about. We want to help people, but we also cannot turn a blind eye to the trafficking.

Chair Miller:

Is there anyone else here in Carson City who would like to testify in support? [There was no one.] Is there anyone in Las Vegas who would like to testify in support?

Ronda Bowman, Private Citizen, Las Vegas, Nevada:

I am here on behalf of my son, Shane Bowman, who was taken when he thought he was taking a Percocet pill. He took a quarter of a pill that was laced with fentanyl, and it took his life. I have had several trials in my life that I thought were about as hard as it could be, but I did not realize it could get worse. This has been the hardest yet. My husband and I struggled to have children for seven years before we finally opted to adopt and got our beautiful daughter, Tiara. We waited another three years for our son, Shane, to finish out our family. Ten years of hoping. I tell you this because after working so hard and so long to get him here, it took just moments for a quarter of a pill laced with fentanyl to take him away.

Shane was a joy in our lives. He was an adventure lover, and he had many dreams and goals that he looked forward to in his future to share with us as well. That is gone. He was our guardian here on earth. I hope he is able to continue to stand guard for each one of us from the other side of heaven. He was a loving son that sincerely enjoyed spending time with his family. That is gone.

We had the blessing of living directly across the street from him. These last several years, we were able to say good morning in person, have dinners, and just enjoy his most amazing smile and visits. That is gone. He was a self-proclaimed mama's boy and would stop by several times a day during his breaks just to give his mama her daily hug and to eat lunch. That is gone. Life has not been the same since he was taken from us, and I think I am justified in saying it never will be. Thoughts of him continue to consume a major portion of our daily lives, which also means we still continue to experience the heart-wrenching grief on a daily basis. I am hoping that something positive can come from his death to help move bills like this forward, to protect others from this happening to them. I am blessed by the life he lived but I cry for the one he did not. He was a bright light that has gone from my earthly life. It has left a huge hole in my heart. Now my heart holds him when my arms cannot. I loved him his whole life. I will miss him for the rest of mine.

Brent Bowman, Private Citizen, Las Vegas, Nevada:

I appreciate the words and the consideration for the Wandas of this world. My Shane, he was a Wanda, a recovering Wanda. For seven years, he had remained clean until he could not get the medication he needed at the hospital after breaking his collarbone, a subject for another day. How I wish now that Shane had been caught in a net of some kind, even if it ended in incarceration. Shane's traffickers exterminated him. Before his death, he told me, Dad, I just want my dad back, and I thought, I have been here all along; I am glad you are coming back. But he helped me to realize, after thinking about it, that I had distanced myself from him,

from my only son. Our relationship had been strained over seven years of addiction. Now, I have regrets of lost time, lost opportunities, a lost relationship which I regret all because of a substance that can kill you if you touch it.

Tiara Bowman, Private Citizen, Las Vegas, Nevada:

I am very grateful for this opportunity to speak to you, and I ask for your support of Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint). As someone who is a recovering addict myself and has also spent time in the system for different charges, I know the necessity of this. I am now recovered and a productive member of society. I operate the janitorial business that my brother left behind. As my parents have stated, my brother was not in his addiction, and he was seeking out some type of relief from not being given any type of medication at the hospital. My brother had overcome so many different things, and if there was someone who was more undeserving than this, it was him. My family's hope is that our story and my brother's story can make a change in our future and be able to stop what is happening with fentanyl today.

Chair Miller:

Is there anyone else there in Las Vegas who would like to testify in support? Not seeing anyone, we will move to the phone for testimony in support of Senate Bill 35 (1st Reprint) or Senate Bill 343 (1st Reprint).

Troyce Krumme, Vice Chair, Las Vegas Police Managers and Supervisors Association:

I would like to thank Attorney General Ford and Senator Cannizzaro for bringing these bills forward. For the sake of brevity, I will just offer our support for this bill.

Chair Miller:

Is there anyone else wishing to provide testimony in support? [There was no one.] Is there anyone who would like to testify in opposition?

Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office:

I am testifying in opposition to both bills this morning. I want to make it very clear—because we have heard some conflicting statements—this bill is about possession. This is a possession bill, and it is undisputed. No one is going to get up and dispute that fentanyl is not deadly; it is. It is ravaging my community, and I want a reasoned response to it, but it is also undisputed, and evidence will be provided that so are these bills. Increasing penalties for possession of drugs increases overdose deaths.

Now, I just want to go through what this is going to look like in practice. We have heard a lot about somebody having 200 pills on them or being a drug trafficker or Joaquín "El Chapo" Guzmán. I want to walk through what this looks like in practice. [Ms. Roth holds up a bag, [Exhibit D](#)]. This is sugar. Is this drug trafficking? This is 4 grams, and a person who buys cocaine and a granule of this is fentanyl is now going to prison for 6 years. Some of you have children who are about that age; that is their entire lifetime. This is not a drug trafficker. [Ms. Roth holds up a second bag, [Exhibit D](#)]. This is 15 years in prison.

This is not El Chapo, and this is not a drug trafficker. [Ms. Roth holds up a third bag, [Exhibit D](#)]. This is life in prison. That is your entire life. This is not El Chapo. This is not a drug trafficker.

I want to be clear that we are not talking about pure fentanyl here. You heard testimony that you are not seeing pure fentanyl on the street. This is somebody who has bought narcotics for personal use and it is laced with fentanyl, and that is absolutely, regardless of the intent of the bill, who we are going to be putting in prison. It is everyday users. It is the kid who is trying cocaine for the first time after a University of Nevada, Reno game or the person who is struggling with their addiction and has been for years. They are all going to prison under this bill. Let me be clear about something else; they do not get treatment. You are convicted of drug trafficking; you do not get treatment. It is mandatory prison. We are going to throw these people away, and Nevadans deserve better than that.

We have done this before as a country. We are hearing this is not the war on drugs again. Let me be very clear about this: this is the war on drugs. What the war on drugs did with the crack cocaine epidemic was it said that there are mandatory minimum sentences when you have cocaine, and it is laced with baking powder.

What I will close with is this: this is going to cost the state money. A fiscal note is likely coming from Department of Corrections on this; tens of millions of dollars are going to be spent putting people in prison for possession of this [Exhibit D](#). These bills are both morally and fiscally irresponsible, and I urge a no vote on both of these bills.

[Exhibit E](#), [Exhibit F](#), [Exhibit G](#), [Exhibit H](#), and [Exhibit I](#) were not discussed during the hearing but were submitted by Ms. Roth in opposition to Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint) and will become part of the record.]

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

Maya Angelou said, "Do the best you can until you know better. Then when you know better, do better." The thing is we do know better. These penalties that we are seeking in these bills are from 2019, and under our pre-2019 laws, Nevada was incarcerating people at a rate 15 percent higher than the national average. We were also, even more wrongly so, incarcerating our women at a rate 43 percent higher than the national average. To your question, Assemblywoman Mosca, we know how these laws play out. Mother's Day was this past Sunday. My mom was an addict. She needed help. Under these laws, she would have been a trafficker. The woman who taught me how to read, consoled me when my heart was broken, made sure I had food, she would have been ripped from our family and put in prison for 6 years. They keep saying that they are not going after those people, but the letter of the law will make it this way. I practiced under these laws for 12 years. The court just reads the plain language. They do not care about what Attorney General Ford said about what his intent is or what Senator Cannizzaro said her intent is with this bill. They care about the plain language of the bill.

The data tells us we were right to close that bad chapter in Nevada history. The Pew Research Center [[Exhibit J](#)] shows that when you increase criminal penalties, it does not reduce drug overdose deaths, it does not reduce drug use, and it does not lower the arrest numbers. There was an article recently in the *Las Vegas Review-Journal*, which I cited and hyperlinked in the letter [[Exhibit K](#)] I submitted, that shows that of the people held in jail for a month, 463 of those people were for possession under 14 grams at a cost of \$245 a day for those people. That is \$113,435 a day for all those people. If you extrapolate that out for a year, that is \$41 million, and if you extrapolate that to prison where we would say maybe 5,556 people would go to prison that year, that is \$138,900,000 that we are not putting into public education campaigns to stop this drug or into public health campaigns. We are not doing anything with that money except incarcerating our way out of it. If we could incarcerate our way out of this problem, Sheriff Balaam would have fixed it and Michael Schwartzer would have litigated it away. But we cannot; the data shows that we cannot.

This bill could have been so much more. Colorado did a comprehensive bill [[Exhibit L](#)]. They came with a lot of solutions and appropriations. They came with a defense for people who do not know fentanyl is in their drugs because people do not want that in their drugs. We did none of those things. All we offered here is prison. That is all we offered. That is all we are offering Nevadans. We know better now. We have done this before even in this state. I am asking this Committee to join us in standing up to these laws, sending the proponents of these bills back to the drawing board to give us a better piece of legislation that will actually help Nevadans, which will actually help these poor people who are dying, that will change things. All this does is ensure that my mom goes to prison. All this does is ensure that moms are ripped away from their families, that brothers, sisters, and fathers spend time in prison with no treatment.

Athar Haseebullah, Executive Director, American Civil Liberties Union of Nevada:

The American Civil Liberties Union of Nevada stands on firm opposition to both of the bills presented today, which are the two most regressive and dangerous drug bills brought in Nevada in years that rely on anecdotal stories instead of science and research to justify them.

The reason why the Las Vegas Metropolitan Police Department lieutenant today specifically mentioned they have not seen more than eight pills for personal use is notable because when you target the unhoused or lower-income communities for disparate enforcement, you only get anecdotes like that. It is also a marker and an indicator of how law enforcement intends to use these bills in the communities that will be the intention behind the target here. The cartels do not care about these bills at all. They got their money before it hit the United States. These bills today simply exist to pad arrest and conviction statistics, and you know who will be targeted here.

We suggested instead those bills go after predatory sale of fentanyl which would have made it a category B felony at some point if someone knowing an item contained fentanyl intentionally failed to disclose that to a buyer. That provision would have, in fact, been the toughest and most logical solution to address predatory conduct, which is what the families

that you heard today that spoke about losing someone would have dealt with, which is what all of us in the community that deal with these issues consistently would have had to deal with. But we did not go after predators here; we are going after simple petty possession. As Ms. Roth mentioned, a small quantity will lead to a lifetime of disaster and broken families, broken communities. Those are inconsistent with civil rights and civil liberties; going after predators is not. But these bills today do not do that. They go after the individual user. They cannot even specify the specific drugs they are attempting to preclude here, the specific ways they are going to do it, only specific quantities, because it makes it easier to pad stats.

To my Republican friends on this Committee, many of you I have known for several years, with a vote to advance this specific possession bill today, you would be endorsing the concept that strict criminal possession without any level of intent or knowledge is an effective tool in combating societal ills that impact human life instead of going after nefarious actors. How are you going to respond when gun rights, which do remain subject to restrictions, fall victim entirely to the same logic?

To my Democratic friends on the Committee, many of you I have known for years, and I have walked with you and supported you. Nobody, when you were walking—and I know this because I have had conversations with many of you—asked for these bills. Not a single person before today asked you to criminalize drug possession or target those who are experiencing addiction. Yours was a message of supporting our community; a message of racial justice; a message of making sure that families were not on the receiving end of civil rights abuses. You ran on a message of standing up to injustice and fighting for the people. Criminalizing possession would be a betrayal of what you have told our communities and the people. We cannot play politics with peoples' lives. History requires courage, and we know you have it. We are asking that you do not advance these bills out of Committee today and that you fulfill your promise and obligations to the communities that you serve.

Lilith Baran, Policy Manager, American Civil Liberties Union of Nevada:

I am here also as a site for naloxone, which I disperse outside of my home, because this is deeply embedded in my community. In Washoe County, 79 percent of overdoses happened in the home of the person who overdosed; 77.4 percent of those overdoses were people with a past history of addiction; 55.3 percent had a bystander present; and 44 percent had mental health issues. Naloxone was administered to 30 percent of those people. We have a problem, and one of the biggest problems I have noticed is that we are so out of touch. This is so out of touch because the one thing that was not mentioned is that there is another drug already knocking on the doors that no one has even mentioned. In case anyone needed the education, it is called "xylazine." It is already more deadly when combined with fentanyl. There is nothing in the bill about that drug.

The national Drug Policy Alliance says about xylazine and fentanyl that it is incredibly counterproductive to lead to a more unknown and potentially more potent drug supply like we saw with the opioid epidemic, with heroin, with crack, with cocaine. We are going to repeat it with substances like xylazine that do not have a Narcan. There is no remedy already for the next drug knocking on the doors of our communities.

We did this experiment in the eighties. We had 15,000 people behind bars for drug dealing. Now we have about 450,000 people behind bars for drug dealing and the prices of all major drugs are down dramatically. If the question is, Do longer sentences lead to a higher drug price and therefore less drug consumption? The answer is no, it does not. Though we know that this had good intentions, the road to hell is paved with good intentions, and we appreciate all of the work everyone has done on this, but we absolutely cannot stand idly by and watch our communities perish under these kinds of dangerous laws.

Nick Shepack, Nevada State Deputy Director, Fines and Fees Justice Center:

We are here in opposition today to both bills for their extreme penalties and extreme fines that will be levied against drug users. I think one of the best questions asked today was by Assemblywoman La Rue Hatch, which was, Can you point to a study? Can you point to data that shows that this works? We have been in talks, as the Attorney General said, for 101 days now about this bill and I have had one request this entire time: show me evidence that this will reduce overdoses and reduce deaths. I am still waiting on that evidence. What we have found is thousands of pages of research. There is a 300-page report by the RAND Corporation, not a left-leaning think tank. The RAND Corporation cites dozens and dozens of studies and has an entire chapter dedicated to why this response is the wrong response and why this response leads to more deaths.

I will get personal for one second. I have had an intimate experience with fentanyl, and I do not want to be here today to talk about this, but it is important. We talked about a person bringing drugs to a party and we were told it is not like going to 7-Eleven; you cannot just get this stuff. It is that easy. Many years ago, when this was new on the scene, an individual brought to a party in the woods that we were camping at, pills that they thought were Percocet. These are 500 milligram pills. Eight of them is 4 grams. Those were taken. Luckily, everyone there survived but it was a close call. Nobody at that party was a drug trafficker. Nobody needed six years in prison. That was a mistake, and it needed to be treated like one. This bill will criminalize people like that, and we must vote no.

Katie Brandon, Private Citizen, Reno, Nevada:

I am a graduating master of public health student at the University of Nevada, Reno. This bill goes against all of the strategies that we are taught for protecting communities in the public health program. I have lost friends and classmates over the last few years to fentanyl overdoses. This bill would not have prevented fentanyl from getting to them and it would not have saved their lives. If anything, even with the Good Samaritan provision, it would have made their friends more scared to call for help. It would have made them afraid to test their drugs because then they would have been in knowing possession of fentanyl. This would have killed them. The DEA found that laced pills are at most about 4 percent

fentanyl by weight. If we want to identify people trafficking 4 grams of fentanyl, we are already doing that with the current 100-gram statute. Public health and public safety are not separate concepts. You cannot address public safety while dismissing the core public health principle of harm reduction. Please oppose this bill.

Jodi Hocking, Founder/Executive Director, Return Strong!, Carson City, Nevada:

I am also part of an impacted family. My husband comes from a family that has been impacted by the war on drugs. They lived in Los Angeles in the 1970s and 1980s, and his mother for all intents and purposes was Wanda. She was addicted to crack and heroin. My husband was born in prison, addicted to both of those drugs. His life has been indescribably intertwined with the prison system as was his mother's and generations of his family. We keep hearing that this is a trafficking bill, but trafficking bills trap people who are not trafficking. They are supporting addictions. The war on drugs has taken decades to even begin to undo the harm that was done to the people who were targeted from those policies, not just the war on drugs, enhancement laws, habitual criminal laws, laws that target groups of people and predominantly Black, Brown, and poor people. When we create policy and efforts to stop one thing, we create other unintended consequences of more people who are caught in the eye of this hurricane.

My final point in this comment, my area of expertise really is on Nevada prisons. This legislation is going to create a huge influx into our state prisons which are already struggling and facing critical staffing shortages that Nevada has really been unable to handle. There is a correctional staffing shortage in the federal prisons that is about one-third staffing. In February, Director Dzurenda testified on public record that we currently have a 23 percent shortage of staff in our southern prisons and over 60 percent shortage in northern prisons. We are down over 400 corrections officers. In his comments, those positions are never going to be refilled. People do not want them. From his testimony and the letters received by Return Strong!, these shortages impact the ability to program and rehabilitate. It impacts food, nutrition, and feeding people. It is creating a situation where people in prison are in cells 22 to 23 hours a day across the state, and it impacts the ability for people to be able to parole, consequently impacting the right to liberty.

I always talk about the tip of the iceberg and the root of the problem. This fights the tip of the iceberg and does not address the root of the problem, and that is the concern. Both personally and professionally, we oppose S.B. 35 (R1) and S.B. 343 (R1) because it is going to trap the wrong people in prison.

Erika Minaberry, Private Citizen, Sparks, Nevada:

I am an addict. I have been clean for 19 years. I can tell you that I would definitely have never been able to get clean had I caught a felony while I was in the throes of addiction, and make no mistake, while I was never a distributor under these bills, my existence as an active user would have definitely classified me as a low-level dealer. I am going to be real with you all right now and say that 4 grams is barely a weekend supply for an active user. While these testimonies in support have highlighted the horrors that fentanyl is wreaking on our community, none of them have been able to clearly identify how these bills ease this crisis,

regardless of how emotional they have been. In fact, many of these testimonies highlighted the need for programs, some already being implemented, that will do more to ease this crisis than these bills will do. Please remember that impact is greater than intention. This bill has so many unknowns in it, but the impact is knowingly harmful. Please vote no on these bills.

Ashley Dodson, Co-Founder and Co-President, Cannabis Equity and Inclusion Community:

I am also a master of social work. I am here in opposition of S.B. 343 (R1) and S.B. 35 (R1). We all understand the seriousness of fentanyl and all other substances that potentially can cause death. However, as an advocate for those who have been negatively and disproportionately impacted by the failed war on drugs over decades, my concern continues to grow as it seems to be a repeat of such with a bill proposed as this. There is still no resolve or clear explanation in how weights, testing, and other determinants to prevent the casting of such a large net are factored in because there is no state laboratory, among other several negligences mentioned. This is highly alarming and disturbing as our communities, family, students, especially those who are Black, Brown, and Indigenous, will be penalized and incarcerated. There needs to be more efforts and due diligence for rehabilitation and addressing substance use and addiction. Targeting traffickers will not be resolved by increasing penalties and overpolicing. It will increase deaths, overdoses, and the intents mentioned do not overwrite the black and white. In conclusion, I urge you to vote no on these bills as it will affect you, your colleagues, and families with prison sentences and no real rehabilitation or reentry into our communities.

Chair Miller:

Is there anyone else here in Carson City in opposition? Not seeing anyone, is there anyone in Las Vegas?

A'Esha Goins, Vice President, Las Vegas Branch, National Association for the Advancement of Colored People:

I stand in solidarity with my colleagues in Carson City. I also just want to give a moment to grieve and mourn those persons' lives that were tragically impacted by the war on drugs. It is hurtful and harmful to have this conversation over and over and over again this session. It has been a reoccurring trauma for me personally. I am sure that the intent of this bill is not, and "have been heard" is not to incite another war on drugs. However, implementation always shows up a different way. I thank the Chair and the Committee for being so mindful and thoughtful for asking all the questions and wanting to have a full understanding. I am sure that we all heard that there is just no conclusion. It is just inconclusive on how this bill will show up in our communities. I would hope that you would take all of that in the heart and consider all of the communities, especially those who have already been impacted, what this will mean for their lives all over again. I appreciate your intentions, but implementation scares me, personally.

Chair Miller:

Is there anyone else there in Las Vegas who wishes to testify in opposition? Not seeing anyone, we will open the phone line for those wishing to testify in opposition. I want to make this quick comment that we will lose the room in Las Vegas. It will be turning over at noon for another committee hearing. Is there anyone in Las Vegas to testify in neutral? Not seeing anyone, we will go to the phone for our testimony in opposition to Senate Bill 35 (1st Reprint) or Senate Bill 343 (1st Reprint).

Shelbie Swartz, representing Battle Born Progress:

We stand in opposition to S.B. 35 (R1) and S.B. 343 (R1) as written. While we commend efforts to quell the outbreak of fentanyl deaths and offer amendments, we believe these bills will still have severe unintended consequences. Mandatory minimum sentences for simple drug possession or trafficking as seen in this bill are reminiscent of the failed war on drugs. They are not proven to deter crime while also increasing the likelihood of recidivism. I know the sponsors do not think that this is the same as the war on drugs; however, the words we heard today in these bills are eerily similar. This is going backwards from the work we have done the past several sessions. Even the fear and stigma created by these enhanced penalties can lead to communities having a fear and distrust of law enforcement that further erodes public safety and trust.

As the niece of an uncle who died houseless after years of drug and alcohol addiction, this is personal for me. Preventing overdose deaths and treating addiction are matters of public health, not prisons. Lawmakers should follow the guidance of public health experts on this issue rather than pushing for further incarceration for people who probably do not even know that they are in possession of these drugs. This bill will in fact kill.

Nicole Williams, Private Citizen, Dayton, Nevada:

I am in firm opposition of S.B. 35 (R1) and S.B. 343 (R1), and due to time constraints, I will echo all of the previous speakers' statements.

Garrett Hade, Organizing Director, Recovery Advocacy Project:

I am a person in long-term recovery since March 3, 2015, from opioid use disorder. I am here today to strongly express my opposition to both bills. While I share everyone's concern about reducing overdose deaths in Nevada, it worries me that our state elected officials think that new crimes and increased penalties are the solutions. If the failed drug war has shown us anything, harsher punishments and prison terms do not deter the use of drugs. I am somebody who can attest to this fact personally as I have been incarcerated multiple times for felony possession of related offenses. Never once did I leave the justice system and stop using drugs. On the contrary, I went directly back to it, putting myself at extremely high risk for fatal overdose, which data and evidence will support. The fact is that these bills will target possession. They will fill Nevada's prisons with people who have a substance abuse disorder just like me. That would include people who had no idea the drugs they bought had trace amounts of fentanyl in them, because as we have heard, it has infiltrated and tainted the nation's drug supply.

I would also add that many times in my life, I had bought in excess of 40, 50, 60, or 70 pills because a group of our friends pooled money to bring down the price of these pills. Under these new laws, the one person who went to pick them up would be considered a trafficker. Further criminalizing addiction will not solve the opiate crisis. Instead of focusing on criminalization, we should be strengthening public health programs that focus on life-saving interventions, prevention, treatment, and recovery. Over eight years ago, I found recovery, and I have been able to maintain it only because of evidence-based care. I had access to stable, ethical, and supportive recovery housing. I was able to access peer support, medication-assisted services, and mental health care and was given a chance at employment despite my criminal background. I can promise you that was not easy. Just even three years ago, nine years after my last arrest, I was denied the ability to rent an apartment because of my record.

Today, I am a member of this community. I pay taxes. I vote. I own a home. I was just married this last year and I will be a first-time father come September. All I can say is thank God these laws were not in effect while I was still struggling. I would have been deprived of the beautiful life recovery has afforded me, and it deeply pains me that if these bills pass, you will be depriving others of the same opportunity. Please vote no on these bills.

Shauna Borrow, Private Citizen:

In the interest of time, I second with folks in opposition to this bill. I think drug policies should be led by public health advocates and not by the police. Thank you so much for your time, and I ask you to oppose these bills.

Laura Martin, Executive Director, Progressive Leadership Alliance of Nevada:

I am here in opposition to Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint). To save time, most people have already said what we were going to offer in our testimony, but I also just want to lift up that this should be guided by public health solutions, not carceral systems and definitely not the police. As we welcome stadiums and Hollywood and all of these big corporations to our state, we have to use it as an opportunity to strengthen our own health care network, to incentivize people becoming doctors and nurses and health care providers. We should not wait until we are just trying to throw people in prison. I, too, can conjure up some tears. My brother Ian overdosed July 17, 2001, but he needed help. He did not need the possibility of arrest. Thank you for holding this hearing again and giving people the opportunity to share their thoughts.

Alissa Cooley, Private Citizen, Las Vegas, Nevada:

Though my brother died from an opioid overdose 15 years ago, I oppose both these bills. As community members have pointed out this morning, there seem to be too many unknowns relating to these bills and how they will be enforced, how the larger problem will be addressed, what the actual impact will be fiscally and socially, et cetera. Importantly, criminalizing amounts of fentanyl without a procedure in place to accurately and scientifically measure those amounts when mixed into other substances strongly indicates

that these bills are premature. I do not seek to diminish the severity of the fentanyl crisis and I strongly and deeply feel for those affected in our community as a whole, but I only ask that the Legislature not put the cart before the horse on this important issue.

Hardy Cole, Private Citizen, Las Vegas, Nevada:

I am an attorney in Las Vegas. I am firmly opposed to S.B. 35 (R1) and S.B. 343 (R1). Unfortunately, each one of you have a duty to criminalize, not criminalize, common people. This is not a trafficker bill but only goes to stroke the egos of those who introduced this. None of these bills take care of the root problem of drugs. It will penalize everyday Nevadans not only by the increased costs, but also reallocating already stretched resources that will hurt ultimately all Nevadans in the end. Moreover, this does not take care of the El Chapo's of the world because here we are today. Stop grandstanding on the backs of Nevadans. This does not protect Nevadans.

Lauren Karp, Private Citizen:

I am calling to express my strong opposition of S.B. 35 (R1) and S.B. 343 (R1) which is criminalizing possession as a means of addressing the impact of fentanyl, particularly due to its harmful impact on marginalized and BIPOC [Black, Indigenous, and People of Color] communities. The war on drugs relied on punitive measures and it failed. It further perpetuated racial disparities within the criminal justice system. Despite similar rates of drug use across racial and ethnic groups, BIPOC individuals, particularly Black and Brown communities, face higher arrest, conviction, and harsher sentencing for drug-related offenses. This will deepen systemic racism, perpetuate social inequalities, and contribute to mass incarceration. Criminalization also leads to stigmatization. These BIPOC communities already face socioeconomic disadvantages. They bear the brunt of the stigma creating barriers to employment, education, housing, and health care. Successful recovery and reintegration become even more challenging.

We must shift our approach to treating addiction as a public health issue. By investing in health-centered strategies, we can reduce racial disparities, promote equity, and foster healthier communities. It is time to move away from the failed war on drugs and prioritize justice, compassion, and equity. Moreover, the criminalization of possession diverts resources from evidence-based treatment, prevention, and harm-reduction programs. Valuable resources are wasted on law enforcement and incarceration instead of addressing the root causes of addiction. This lack of investment disproportionately impacts marginalized communities and perpetuates the cycle of addiction and criminal justice involvement.

I urge you today to consider the profound impact of criminalizing possession on BIPOC and other marginalized communities. Oppose this legislation that seeks to criminalize possession and advocate for policies that prioritize treating addiction as a public health issue, supporting marginalized communities, and promoting equity. It is my opinion that strong healthy communities make policing obsolete.

Ashley Gaddis, Private Citizen, Las Vegas, Nevada:

I would like to echo all the questions, concerns, and comments that have already been stated. I would like to add that I do agree with the effort and intent to arrest and incarcerate the traffickers. But this bill right now does not provide the protection for the addicted person. As we all know, what is said right here, right now, in legislation will not shadow in the court of law when it comes down to the legal aspect of who is an addict and who is a trafficker, who goes to prison, who goes to rehab. I am an active participant in recovery and the medication-assisted program right now. My concern is that this would criminalize addicts. The prison system should not become housing for people who really need help with addiction, especially right now when services are so limited within NDOC, and so I would oppose S.B. 35 (R1).

Sean O'Donnell, Executive Director, Foundation for Recovery:

We are a charitable organization operated by people and families recovering from substance use and co-occurring disorders. We have lost our friends and our families to overdose. We are the very constituencies these bills incorrectly target. We are in opposition of both bills. The intent of these bills is good but critically misses the mark. The strategy to address overdose deaths presented in these bills is not supported by evidence. On the contrary, we know this approach harms communities. Whether it is intended or not, these bills will wrongly harm people like me and Wanda.

I want to make a quick point that fentanyl cannot be likened to GHB. There are people who do use fentanyl, oftentimes mixed with other substances. Addiction is a chronic, progressive disease. What the presenters are failing to mention is purity. There is no way for us to test purity in our state and we cannot have this conversation until we can. Four to fourteen grams of other substances like cocaine, meth, or heroin is personal use, but if that substance tests positive for some fentanyl, then they are a drug trafficker. It just does not make sense. We have not seen any evidence or data that supports the idea that this is a necessary or effective tool to combat this crisis. There are better tools that we can provide our law enforcement and communities to combat this crisis, not cast a wide net that inevitably will target people impacted by drug use. It is bad policy until we can separate the traffickers from the users. The current language does not offer that. It is a waste of our resources.

The mandatory sentences are one thing, but I want lawmakers to keep in mind what happens following incarceration. They end up at the doorstep of our organization and other nonprofits. The long-term effects of these felony charges make it exponentially harder for our recovery team to find housing and employment for people with felony charges. What happens to someone when they cannot find a place to live or work, the cycle starts over. Data from the Nevada SUDORS [State Unintentional Drug Overdose Reporting System] report shows people recently released from incarceration are one of the highest risk groups for overdoses in our state. Evidence suggests measures such as this led to more deaths. Families, people who are recovering from substance use disorder, criminal justice, public health efforts, we all agree that this is regressive policy and will not address our ability to curb opioid deaths or deter fentanyl in our drug supply.

Katherine Sitsis, Private Citizen, Las Vegas, Nevada:

I am speaking in opposition to these bills. These bills are an emotional, fear-based reaction to a problem that should instead be battled with data-based research and the benefit of decades of hindsight that we have today. We know from history that harsher punishments do not reduce drug use or deaths and we must not repeat the mistakes of the past. While the bills may be well-intentioned, they would undoubtedly catch small-time users and addicts. Passing this bill, knowing that fentanyl is almost always part of a compound, but without the infrastructure and capacity to determine the actual amount of fentanyl within a compound, is irresponsible. It is taking the approach of shoot first, ask questions later, and the consequences of its passage could be tragic for our community, and Nevadans deserve better.

Julian Gregory, Private Citizen, Las Vegas, Nevada:

I am calling in opposition to S.B. 35 (R1) and S.B. 343 (R1). I believe that the testimony given today renders the exhortations of the proponents hollow in that this is not a continuation of the war on drugs. I would ask you to not consider these bills.

Jessica Smith-Peterson, Private Citizen, Las Vegas, Nevada:

I am here to express my sincere opposition to both S.B. 35 (R1) and S.B. 343 (R1). I have gone through and read the bill along with proposed amendments and can see that these two bills which may seem like they are targeting drug traffickers and in support of families with children who have succumbed to fentanyl, is, in fact, targeting those who are addicted. This bill makes it a crime so that any possession of fentanyl or any drug that contains trace amounts of fentanyl is considered a crime—cocaine, ecstasy, and the like. We have heard from families that fentanyl was placed in Percocet, oxycodone, and methamphetamine. What we are witnessing with these bills is an attempt to recriminalize being addicted to drugs. We are witnessing the reincarceration of the Wandas through its impact, and we are witnessing a bill that seems to revise old drug laws in the state of Nevada that label addicts as felons and as prisoners. To add insult to injury, it is also added in S.B. 35 (R1) that after individuals are sent to prison, then they have the chance to receive the drug rehabilitation and treatment that they need. However, instead of choosing to constructively channel our resources to treatment and addiction services, we would rather make it harder for them to recover. To the Committee members, the plain language of the bill is very clear, and it will affect many of our most vulnerable. Please vote no on S.B. 35 (R1) and S.B. 343 (R1).

Quentin Savvoir, President, Las Vegas Chapter, National Association for the Advancement of Colored People:

We are in firm opposition to both bills being discussed today. While we appreciate the spirit of the spirited discussion and I want to make sure we express our condolences to folks whose families have passed away from fentanyl, I am appalled that we have not learned from our mistakes. I am a product of the war on drugs. Growing up, my mother had a drug addiction, a crack addiction, and I watched our local police criminalize her and disrupt our family and our neighborhood. I cannot help but see the vestiges of that in this bill. We find money for all kinds of things in this state, but we cannot seem to find money to care about people and to invest in the care that people need so that we do not have to have bills like this. As my

comrade and brother, Athar, said, the drug traffickers have already earned their dollars. They have already made their money. We have a responsibility to make sure that we are protecting our community from being overpoliced and unfairly subjugated to law enforcement. I urge a strong opposition to this bill.

Betty Guess, Private Citizen, Indiana:

I am calling in opposition to S.B. 35 (R1) and S.B. 343 (R1) for all the reasons that have been previously mentioned, but also because this will not stop fentanyl from coming into our communities. While I deeply empathize with victims and their families, this will also not heal their pain. I hope and pray that we find ways to honor and respect victims and their families without creating additional victims in the system. My hope is that we will build communities that value and fund treatment to eradicate this problem so we do not need to even worry about traffickers because we will not have users to buy it. In the meantime, this is not the answer. I oppose both S.B. 35 (R1) and S.B. 343 (R1).

Madalyn Larson, Co-Chair, Northern Nevada Harm Reduction Alliance:

I am a master of public health student. These bills go against everything we are taught for promoting public health. I strongly urge you to oppose these bills.

Bishop Jackson, Jr., Private Citizen, Las Vegas, Nevada:

I oppose both S.B. 35 (R1) and S.B. 343 (R1) for reasons already spoken by previous speakers.

Randy Fiedler, Private Citizen, Las Vegas, Nevada:

I am calling to oppose this bill, and I urge the Assembly Committee on Judiciary to vote against it for all the reasons stated by everyone who has opposed this bill.

Chandler Cooks, Private Citizen, Las Vegas, Nevada:

I want to start by thanking the Committee for your diligent efforts in scrutinizing this bill and raising the pertinent questions that uncover the complications and potential pitfalls of this bill. As history has shown, the alignment between intention and real-world outcomes often does not correlate. Though this bill may appear commendable and well-intentioned, it has the potential to cause serious unintended consequences that detrimentally affect our communities and further exasperate the existing disparities in our criminal justice system. This bill seeks to establish new crimes for trafficking fentanyl, but at what cost? Implementing harsher penalties without necessary discernment will undermine the fundamental principles of justice and fairness. The approach this bill takes neglects to distinguish between the levels of involvement in individual circumstances which will ensnare folks who have been unwittingly or marginally involved in what is being deemed as trafficking. Instead of further entrenching criminal drug offenses, our focus ought to be directed towards addressing the fundamental catalysts of substance abuse and providing a range of treatments to support services tailored to those individual needs. While I hold genuine appreciation for the underlying intentions behind this bill, it behooves you to take a step back and consider all of the potential risks and errors before enacting hasty legislation that could do more harm than good.

Yesenia Moya, Private Citizen, Las Vegas, Nevada:

I am a local community member impacted by these bills. I am here in opposition to both S.B. 35 (R1) and S.B. 343 (R1) for all of the reasons aforementioned by the vast number of community members who have shown up to call in opposition. I truly believe that though the Attorney General and the Senator may have the best intentions in the world, and law enforcement may as well, our communities deserve safety. As mentioned by the questions from the Committee, this seems like an issue that should be for the Department of Health and Human Services. This is about public health, and it needs to be addressed as such and not criminalized. We do not need history to repeat itself and to replay here in Nevada. Please oppose S.B. 35 (R1) and S.B. 343 (R1), as the community, as you have seen, the entire community has come out in opposition to this. Please do not pass these bills.

Jason Makris, Private Citizen, Las Vegas, Nevada:

I am in strong opposition of S.B. 35 (R1) and S.B. 343 (R1) for the reasons that many of the people have already stated previously. I offer my condolences to the victims and family members who have lost people due to overdoses, but this is not the correct bill to address those issues. Indeed, when asked how we would make the transfer from qualitative and quantitative difference in measuring, Attorney General Ford said that this would take time. In the meantime, many people who are addicts would be swept up during this bill and would not be afforded the recovery and access to care that they need. Finally, law enforcement has many tools at their disposal already to deal with these issues, as indicated by Deputy District Attorney Schwartz, who indicated other ways in which they have effectively charged people who are trafficking in these drugs. I strongly urge all of the Assembly members to learn from history and not let it repeat itself and vote no on S.B. 35 (R1) and S.B. 343 (R1).

Amy Yonesawa, Private Citizen, Las Vegas, Nevada:

I strongly oppose these bills. For time's sake, I will just echo the points made by others and ask the Committee members to look at the online opinions where constituents can more fully explain their reasons. Please vote no.

[[Exhibit M](#), [Exhibit N](#), [Exhibit O](#), and [Exhibit P](#) were not discussed during the hearing but were submitted in opposition to Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint) and will become part of the record.]

Chair Miller:

Is there anyone else on the phone wishing to testify in opposition? [There was no one.] I will open it up for neutral testimony in Carson City.

Karla D. Wagner, Private Citizen, Reno, Nevada:

I am a professor of public health at the University of Nevada, Reno. I am here to provide a scientific perspective on the potential effects of laws that increase sentencing penalties. I am not representing the university in my viewpoints, though my testimony is supported by decades of research conducted by myself and others in the field. The evidence shows that increasing sentencing penalties does not prevent overdose deaths. In fact, there is a scientific consensus that increased sentencing penalties can increase risk for overdose death. In my

research in Nevada, fear of law enforcement is a primary deterrent from seeking medical help during an overdose. People equate calling 911 for help with calling the police and many people simply will not do it. In the absence of medical intervention, overdose victims are more likely to die, and in the face of increasing penalties, people are more likely to hide their drug use from others and use drugs alone, both of which are primary determinants of risk for overdose death.

You heard earlier that incarceration itself is a risk factor for overdose deaths. I would just like to put a number on that. People recently released from prison have 10 to 12 times the risk for overdose death compared to nonincarcerated people. Research from as far back as the 1980s shows that mandatory minimum sentencing laws do not achieve the desired deterrent effects and exacerbate racial disparities in incarceration. Regardless of intent, laws like this that impose harsher sentences create negative outcomes based on the fear they create in communities. My research is dedicated to understanding those mechanisms. Public health strategies on the other hand operate by creating knowledge, autonomy, and access to evidence-based treatment.

Finally, I would just like to comment on a concern that has been expressed in terms of concern for the safety of uniformed first responders and occupational exposure to fentanyl. We understand that our uniformed first responders are experiencing unprecedented levels of burnout and fatigue from responding to the fentanyl crisis, and now they are also facing concerns about workplace exposure. I want to share what the national experts have to say on this issue. I will submit the statement to the Committee [[Exhibit Q](#)].

Briefly, the American College of Medical Toxicology and the American Academy of Clinical Toxicology released a statement weighing in on the risks of occupational exposure to fentanyl and resulting toxicity. Their conclusions are that incidental and dermal exposure of fentanyl are not a risk for overdose. For opioid toxicity to occur, the drug must enter the blood and brain. Toxicity cannot occur from simply being in proximity to or touching the drug. There are trainings available for our first responders. I am collaborating with people at the state to make those happen and make those available for our first responders to make it safer for them to do their job and teach them strategies to keep themselves safe.

Chair Miller:

Is there anyone else in Carson City wishing to provide neutral testimony? [There was no one.] I know the people in Las Vegas are there for another committee. Is there anyone on the phone wishing to testify in neutral on Senate Bill 35 (1st Reprint) or Senate Bill 343 (1st Reprint)? [There was no one.] I will close testimony. I would like to mention that there was one final question for Attorney General Ford. While he is willing to answer it, for the sake of time and the fact another committee is scheduled, I will ask that it be asked offline.

I invite Attorney General Ford and Senator Cannizzaro back to the table for any concluding remarks.

Attorney General Ford:

Thank you, Madam Chair and Committee, for this robust hearing, and thanks to all of those who participated. I did not get to hear all of the opposition because I came in afterwards, but I wanted to note a couple of things that I did hear. Let me be clear. Most of you all know me well enough to know I could care less about padding stats. That is not my approach to criminal justice or criminal justice reform. Padding stats, stroking my ego, those are not the driving factors or forces behind my attempting to address an issue that is very important to you on the dais, those behind me here, those on the screen, and those in our communities. People are dying right now because of fentanyl. I am not one who takes the hyperbole quite a lot, but I can tell you this, I can guarantee you that at the rate we are going, if we do nothing this legislative session, more people will die from fentanyl overdoses. We have an opportunity to address that not only from the public health perspective, which we are doing, and I am certain there are many bills of the thousand that are percolating through this session right now that address this issue from a public health perspective. But we need a public safety perspective as well. With all due respect, the Department of Health and Human Services will not arrest the traffickers. That is not their job. That is the job of law enforcement.

That takes me to this notion of the fact that some are conflating issues saying that this bill is criminalizing drug possession. It is not. There is already a law that criminalizes drug possession. It exists. It is not this bill. This bill criminalizes trafficking. That is a distinction. That is a humongous difference in the context of this conversation. We have to keep that in mind. We are talking about traffickers, not users, not the addicts, not anyone who is not a trafficker. We are focusing on traffickers. That is a distinction that makes a huge difference. In that regard, I suspect, although I do not know, I have not read the RAND study, but I suspect the RAND study does not say going after traffickers is an ineffective way of addressing issues. It may say going after drug users is, but going after traffickers, I do not suspect any research will tell you is an ineffective way of lowering drug use in our communities.

With all due respect, again, I will say this has not been an easy conversation, it has been mostly a difficult one to be sure, but it has been cordial, and I want to end by appreciating and voicing the appreciation to those who have engaged in respectful discourse with me on this issue on all sides of the issue, understanding that I bring to this nothing but a sincere desire to address an issue that I think needs to be addressed. We may respectfully disagree on the approach to take, and that may very well be what you all decide to do, but I have done nothing in this context aside from trying to address this issue. Madam Chair, again, I appreciate the opportunity to have been here, and I will entertain any additional questions offline as you have indicated.

Senator Cannizzaro:

Thank you, Madam Chair and members of the Committee, for what was a very thoughtful conversation. I want to be very clear here, and the Attorney General said it many times, we are attempting to address a problem; that is where this is coming from. This is not coming as some sort of an attempt to overcriminalize, overpopulate prisons with people who are in mere

possession or who are mere users or who have an opioid addiction. Again, I think we can do both. I think we can say there are places where we can invest more to assure that Nevadans can address addiction issues, where we can make a distinction between someone who is in possession of a small amount for personal use and those who are taking an extraordinary number of fentanyl-laced pills and distributing it out to our communities that is resulting in the deaths of mostly young people. They are lucky if they make it to an emergency room in the cases of fentanyl. They are lucky if that is the result of what happens, because most of the time that is not what happens. For us to know that is happening and to take no action whatsoever because we are afraid to do so, I think is not a place where I am certainly comfortable being.

There has been a lot of open conversation, and we remain hopeful that there will be some additional offered amendments to this bill to help address some of the concerns we have heard here today. I remain committed to that; that has not changed. But I do think there is a useful tool for law enforcement, especially where we are hearing someone who has hundreds of pills, who is distributing them, who cannot be prosecuted. When we see this in our communities—and that is the face of what is happening, and that is what we are hearing from people who handle these cases, who engage in these investigations, and there is nothing that they can do about it—that to me is just not an acceptable answer to the families and to the folks who are touched by this. We have to do something. What that is, I think we are trying to find the right balance.

The Attorney General outlaid some of the other pieces that I would have offered, but I just wanted this Committee to be sure that this is coming from a place of trying to solve an issue, of trying to get at individuals who are victimizing our communities, and is not an attempt—and we hear you, Madam Chair and members of the Committee—this is not an attempt to create disparities or to recreate the war on drugs. I know there are concerns; they are legitimate, we are hearing them, we are trying to address them, but I want you to know that this does come from a good place, and certainly, good intentions are not the only thing that we can look at. We can also look at smart policy. We are continuing to do that. I want to thank the Committee for what is a lot of time, but a conversation that deserves the time and the questions.

Chair Miller:

Thank you, Attorney General Ford and Senator Cannizzaro, for appreciating the time and effort that this hearing warrants. I will open it for public comment. [Public comment was heard.]

Thank you to the members for your diligence and hard work. Thank you to Committee staff. Thank you to Assemblywoman Marzola, because I know this held up your committee from starting. I will see everyone tomorrow morning at 8 a.m.

This meeting is adjourned [at 12:36 p.m.].

RESPECTFULLY SUBMITTED:

Traci Dory
Committee Secretary

APPROVED BY:

Assemblywoman Brittney Miller, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is proposed amendments to Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint), submitted by John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office; and Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office.

[Exhibit D](#) is a photograph of three baggies of sugar depicting grams of fentanyl, submitted and presented by Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office, in opposition to Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint).

[Exhibit E](#) is a letter in opposition to Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint), submitted by Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office.

[Exhibit F](#) is a document titled, "Fact Checked S.B. 35 & S.B. 343," submitted by Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office, in opposition to Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint).

[Exhibit G](#) is a report dated January 2019, titled, "Nevada Advisory Commission on the Administration of Justice—Justice Reinvestment Initiative, Final Report," submitted by Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office, in opposition to Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint).

[Exhibit H](#) is a document dated December 1, 2022, titled, "Nevada Opioid Needs Assessment and Statewide Plan 2022," prepared by the State of Nevada Department of Health and Human Services, submitted by Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office, in opposition to Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint).

[Exhibit I](#) is a document dated May 2016, titled, "National Institute of Justice, Five Things About Deterrence," from the U.S. Department of Justice, Office of Justice Programs, submitted by Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office, in opposition to Senate Bill 35 (1st Reprint) and Senate Bill 343 (1st Reprint).

[Exhibit J](#) is a letter dated June 19, 2017, to Governor Christie, from the Pew Charitable Trusts, submitted and presented by John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office, in opposition to [Senate Bill 35 \(1st Reprint\)](#) and [Senate Bill 343 \(1st Reprint\)](#).

[Exhibit K](#) is a letter from John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office, in opposition to [Senate Bill 35 \(1st Reprint\)](#) and [Senate Bill 343 \(1st Reprint\)](#).

[Exhibit L](#) is a copy of Colorado House Bill 22-1326, submitted by Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office; and presented by John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office, in opposition to [Senate Bill 35 \(1st Reprint\)](#) and [Senate Bill 343 \(1st Reprint\)](#).

[Exhibit M](#) is a letter dated May 15, 2023, submitted by Evelyn Grosenick, Interim Public Defender, Washoe County, in opposition to [Senate Bill 35 \(1st Reprint\)](#) and [Senate Bill 343 \(1st Reprint\)](#).

[Exhibit N](#) is a letter submitted by Lisa Lee, Private Citizen, Reno, Nevada, in opposition to [Senate Bill 35 \(1st Reprint\)](#) and [Senate Bill 343 \(1st Reprint\)](#).

[Exhibit O](#) is an email dated May 16, 2023, submitted by Anne Auld, Private Citizen, Reno, Nevada, in opposition to [Senate Bill 35 \(1st Reprint\)](#) and [Senate Bill 343 \(1st Reprint\)](#).

[Exhibit P](#) is a letter dated May 16, 2023, submitted by Emily Kaltenbach, Senior Director, Criminal Legal & Policing Reform, Drug Policy Alliance, in opposition to [Senate Bill 35 \(1st Reprint\)](#) and [Senate Bill 343 \(1st Reprint\)](#).

[Exhibit Q](#) is written testimony dated May 15, 2023, submitted and presented by Karla D. Wagner, Private Citizen, Reno, Nevada, in neutral on [Senate Bill 35 \(1st Reprint\)](#) and [Senate Bill 343 \(1st Reprint\)](#).