MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-Second Session
March 1, 2023

The Committee on Judiciary was called to order by Chair Brittney Miller at 9 a.m. on Wednesday, March 1, 2023, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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:

Assemblywoman Cecelia González, Assembly District No. 16

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Nathaniel Erb, State Policy Advocate, Innocence Project of New York
Martin H. Tankleff, Private Citizen, Long Island City, New York
David Thompson, Certified Forensic Interviewer, President, Wicklander-Zulawski & Associates, Aurora, Illinois
Hayley Cleary, Associate Professor of Criminal Justice and Public Policy, Virginia Commonwealth University, Richmond, Virginia
Jensie L. Anderson, Professor, S.J. Quinney College of Law, University of Utah, Salt Lake City, Utah
Mark Fallon, Visiting Scholar, John Jay College of Criminal Justice, City University of New York; and Co-Founder/Director, Project Aletheia
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office
Tonja Brown, Private Citizen, Carson City, Nevada
DaShun Jackson, Director, Children's Safety and Welfare Policy, Children's Advocacy Alliance of Nevada
Annemarie Grant, Private Citizen, Quincy, Massachusetts
Jim Hoffman, representing Nevada Attorneys for Criminal Justice
Joseph Camel, Jr., Director, Cofounder, The Youth Voice of Nevada
Ayanna Oglesby, Private Citizen, Reno, Nevada
Christopher M. Ries, Detective, Las Vegas Metropolitan Police Department
Jason Walker, Sergeant, Patrol Division, Washoe County Sheriff's Office
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Brigid J. Duffy, Assistant Deputy District Attorney, Juvenile Division, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Jennifer P. Noble, Chief Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association

Chair Miller:
[Roll was called. Committee protocol was explained.] We are going to take the agenda out of order. We will hear Assembly Bill 193 and then Assembly Bill 101. I will open the hearing for Assembly Bill 193.

Assembly Bill 193: Revises provisions relating to custodial interrogations of children. (BDR 14-229)

Assemblywoman Cecelia González, Assembly District No. 16:
I am here today to present Assembly Bill 193. Police officers have a legal and ethical responsibility to uphold the law and protect the rights of all individuals, including children who are in custody. Lying to a child in custody can violate these responsibilities and potentially harm the child's well-being. Children who are in custody are often vulnerable and may already be experiencing high levels of stress and anxiety, and lying to them can absolutely exacerbate these feelings and also may lead to false confessions.

Assembly Bill 193 prohibits a peace officer or other person authorized to conduct a custodial interrogation of a child from providing false information about evidence and making promises of leniency or advantages to a child during a custodial interrogation. I have invited local law enforcement and district attorneys to several roundtables to discuss how to make this bill work in Nevada. I know there are still some general concerns, and I have asked them to bring specific language and ideas raised by these concerns. We are still in the process of working that out, which I am sure you will hear in their testimony today.

I believe firmly that no one should be lied to by law enforcement, but this is a narrow and tailored bill that will address an important issue of protecting children. While a person may be charged for lying to law enforcement, this bill carries no penalties for law enforcement who violate it and solely focuses on the protection of children from false confessing. Utah, most recently, and several other states did not wait for an innocent child to spend 20 or more years before enacting this policy in their state. Let us not wait for a child here to be harmed in our state to enact this law. With the Chair's permission, I will turn the presentation over to Mr. Nathaniel Erb.

Nathaniel Erb, State Policy Advocate, Innocence Project of New York:
I am also here representing local innocence organizations in Nevada. We have been working on issues of false confessions for many years as we represent people who are wrongfully convicted across the country [Exhibit C]. Our office works on studying what the causes of those wrongful convictions are in the first place. In this area, we have actually found a lot of partnerships and collaboration with law enforcement themselves. You will hear from some experts this morning speaking to this.

The International Association of Chiefs of Police (IACP) called for law enforcement to cease using deceptive tactics including lying about evidence and falsely promising leniency to children in interrogations because they found it not to be an effective interrogation tool but it was also causing false confessions and leading to unreliable information [Exhibit D]. Since the passage of that guidance, five states have enacted laws in the last couple of years to ban the use of these tactics and to focus solely on how to protect children when they falsely confess and ensure that there are proper mechanisms in the courtroom to judge whether or not a confession is reliable.

The current issue with the standard under the *U.S. Constitution* is that voluntariness does not capture if a confession is reliable. That is in the ruling of the U.S. Supreme Court. The Supreme Court has not said that deception itself is a constitutionally important tactic to law enforcement that needs to be used in all contexts, but simply that the Due Process Clause did not protect against those tactics being used in interrogations. Further, from what is said on many occasions that deception seems to fly in the face with a system that focuses on guilty before proven innocent and is not an inquisitorial system.

This bill is specifically very narrowly tailored to focus on juveniles. It requires that the officer has a knowing intent to provide false information, so it is not going to capture someone if they believe the information to be true but turns out to be false, and also requires the court to provide an analysis that the false confession itself or the information provided has a nexus to likelihood to elicit a false confession. I think this is a very good bill, which unanimously passed in Utah with the full support of law enforcement and prosecutors, but that does not mean it is a bill that Nevada has to pass. There could be changes to this language to make it fit the context here. We have had a lot of really good conversations on this bill as we have had many times in the past with law enforcement and prosecutors. I thank them for their time working on it. I am confident we are going to get to a place where we can move something forward that is going to protect children and will show that law enforcement here does not think that our justice system needs results to be based on lies.

Assemblywoman González:
I wanted to clarify that we had a couple of experts on Zoom. They will introduce themselves and explain their areas of expertise as well.

Martin H. Tankleff, Private Citizen, Long Island City, New York:
I am the Peter P. Mullen Distinguished Visiting Professor at Georgetown University. I am also an adjunct professor of law at Georgetown University, and special counsel at Barket Epstein Kearon Aldea and LoTurco in New York. Finally, I am an exoneree from New York State.

If New York would have had its way, my first eligible parole would have been October of 2040. That is because on September 7, 1988, when my mother and father were attacked and murdered in their home, instead of law enforcement focusing on who committed these crimes, they chose to bring me into an interrogation room and lie to me. Those lies rose to the level of what I would say were atrocities. I was told that my father had identified me as being the murderer; that my hair was in my mother's hands; that a humidity test was done that morning—all this was done because in New York State, it was legally allowed. Additionally, what happened in that interrogation room was not recorded. Suffolk County law enforcement chose not to record any aspect of the interrogation even though they had the policies and procedures and technology in place.

No child, no child anywhere in this world, should be lied to by law enforcement during an interview or an interrogation. We know through empirical evidence that when you lie to

a child, like me, it can lead to a false confession. On September 7, 1988, after hours of interrogation, law enforcement said I confessed to them. Within a few months, I was sentenced to 50 years to life. I want everyone to imagine what 50 years to life being a child is like because law enforcement lied to you. We need to do better. We need to change the law, and I am really hoping this legislative body takes the necessary steps to protect innocent children from this ever happening to them. There should be no more "Marty Tankleffs." We should step forward to enact the law now and not wait any further, because we need to protect our children. There have been too many youthful suspects who have been lied to during interrogation, such as myself, who have spent decades in prison.

David Thompson, Certified Forensic Interviewer, President, Wicklander-Zulawski & Associates, Aurora, Illinois:

My firm is an international training firm that for over four decades now have provided consultation and training on interview and interrogation techniques to federal, state, and local law enforcement. I also often serve as an expert witness on confession reliability. On this specific legislation, I have had the opportunity to be a part of similar efforts across the country in multiple states with mostly bipartisan support, working collaboratively with law enforcement leadership across the country to understand how this proposed bill impacts their ability to resolve cases.

With that all being said, I am here in support of Assembly Bill 193. The two main points I want to make with my testimony today are, first, why we should not use this tactic; and second, why we do not need to [Exhibit E]. Primarily, why we should not use this tactic, you just heard from my colleague, Mr. Tankleff, on the impact of false confessions. You will hear shortly from Dr. Cleary on the social science on how this contributes to false confessions.

From a strategic standpoint, from a law enforcement perspective, one of the reasons that we should not use this tactic is honestly the same reason investigators do use this tactic: it works. We know that when investigators fabricate evidence, it creates memory distrust in the person they are talking to. It creates potential confusion, right? How can you have my DNA if I was not there? This confusion and distrust are often then misclassified as guilt, and when something is misclassified as guilt, it then is a catalyst to a coercive interrogation process.

Now, we are not typically talking about ill-intended officers, right? We are talking about investigators who are trying to get to the truth, trying to resolve the case; but we have to also understand that the only reason we lie about evidence in the first place is because we do not have it. If we do not have it, that means we are using this false evidence ploy as a presumption of guilt, as a tactic to determine if somebody was involved or not, and it has been proven time and time again that that tactic is not a good indicator of truth versus guilt or innocence vs guilt—truth versus deception.

Another really main contributor from a strategic standpoint of why we should not use this tactic is it damages the credibility of the investigator. I am sure we will hear from law

enforcement on some of the difficult cases they have to investigate, especially some violent crimes. We have seen that when you have to talk to a person who happens to be an offender multiple times, somebody that they have to talk to throughout maybe their lifespan. If you lie to somebody when they are 16, 17, 18 years old, and then you hope to make them an informant or a cooperative witness at some point later in another investigation, you have lost that advantage. Police-community trust is paramount in this entire process, and lying to our community only disrupts that plan.

The second part of my testimony, the main perspective that I can bring, is why we do not need to use this tactic. We know law enforcement has a very difficult job in trying to get information from people who do not want to resolve it, and that is why I am here. There are solutions to that concern. This tactic, we have to remember, dates back to a U.S. Supreme Court case from 1969. The availability of evidence has changed drastically over the last six to seven decades of how we can actually investigate versus resorting to lying about evidence. In the last several years, there has been collaboration between academics and practitioners to find more effective ways to get information from witnesses, victims, and suspects through reliable evidence-based means. You are going to hear from my colleagues today on some different ways to do that. From our perspective, we have seen multiple evidence-based methods used by law enforcement agencies across the country with success—cognitive interview, the PEACE model, the strategic use of evidence, trauma-informed interviewing—all widely used, evidence-based, acceptable practices that we are seeing gain more information than the coercive tactics.

To conclude, I understand, obviously, on behalf of law enforcement trainers, that law enforcement has a very difficult job in trying to get information from people who do not want to provide it, but I firmly believe this legislation will not only improve the quality and effectiveness of investigative interviews, but it also will restore and rebuild trust between law enforcement and the community.

Hayley Cleary, Associate Professor of Criminal Justice and Public Policy, Virginia Commonwealth University, Richmond, Virginia:

I am a developmental psychologist by training. My area of expertise is in adolescent behavior and decision-making in legal context, and primarily, interviewing and interrogation and confessions among young people. What I would like to take just a few minutes to do today is share with you a few of the things that we have learned about adolescent development and how their developmental stage impacts their thinking and behavior when they are being questioned by police and why youth in particular are especially vulnerable to deception and to promises of leniency.

The first point I would like to highlight for you is that youths' incomplete brain development hinders their decision-making under stress [Exhibit F]. We know as developmental psychologists that the human brain is not fully functional until actually the mid-twenties and it is interesting and important that the brain develops along different timetables. The limbic regions of the brain, which are the parts that control emotion and reward sensitivity, develop faster than the cortical regions of the brain that help us with executive functioning,

self-control, emotional regulation, judgment, and thinking about the future. What this all rolls up into is that youth are literally less able to think about the future because of their developmental stage compared to adults. If you combine this with youths' incomplete knowledge about the legal system, we know that youth are more likely than adults to misunderstand the legal implications of confessing to a crime—a true confession or a false confession—especially without the assistance of counsel, which we know that so many youths are questioned without a support person present.

The next piece of research I would like to share with you is that youth are more suggestible than adults. Suggestibility means the degree to which we come to accept messages that are communicated to us, either directly or by implication, including information about false evidence. Police are trained to use these techniques—to use leading questions, to offer excuses or justifications to make the crime seem less serious—and research shows that adolescents are more suggestible and more prone to actually change their answers in response to that kind of negative feedback. This is especially the case for youth with intellectual limitations; we know kids from that population are overrepresented in the legal system context, so they are especially vulnerable.

Now, suggestibility is a little bit different from compliance. Compliance involves agreeing to propositions that are not your preference or not your idea just to avoid confrontation. If you think about it from a social perspective, youth are socialized to obey adults every day in their lives, whether it is listening to their parents, following the teacher's rules, or obeying adult leaders in the community. When an adult police officer, particularly a police officer who is uniformed and may be armed—or even multiple officers—when those people use deception to obtain cooperation or confession, youth are less able and less likely to advocate for themselves and more likely to acquiesce to police pressure. That is highlighted so tragically well with the testimony that Mr. Tankleff provided, and I think his experience really highlights some of these critical pieces of adolescent development that we have learned a lot about over the last two to three decades.

The last two pieces that I will mention very quickly are that youth know less about the legal system than adults. We have known for a long time that youth by and large do not understand the *Miranda* rights. They waive their rights at extremely high rates without understanding the words and concepts inherent in those rights. This is also a function and feature of the compliance and suggestibility-related tendencies that I was mentioning earlier. What we have learned very recently through a couple of recent studies is that youth in particular, and even some adults, do not know that police are legally permitted to lie. When police are allowed to use deception and youth do not know that they are allowed, youth come into that interaction expecting everything that is told to them to be true and they make decisions, difficult and legally consequential decisions, within that frame work and within the limited biological and neurobiological capacities that they have because they are works in progress; their brains are not fully baked yet.

The last piece I will point out about adolescent brain development in particular that is relevant to deception and promises of leniency is that adolescent brains are hardwired to

respond to rewards. It is a neurobiological preference that is a function of the stage of development in which young people are in. This broadly covers all the teenage years even through the emerging adulthood years, so people beyond the age of 18. The idea of escaping a situation that is stressful, confusing, or frightening exerts a stronger neurobiological pull on young people than adults. That makes particular forms of deception, like implying leniency, especially dangerous. A young person who hears an interrogator say or even imply that this will all be over—essentially if you cooperate or you confess—young people are going to be much more sensitive to those short-term rewards—the reward of relief—than a person who has fully reached the age of neurobiological maturity.

These are some of the things that we have learned about why and how youth are especially vulnerable to deception in this particularly stressful context. I think it is really outstanding from a social science perspective that the Nevada Legislature is considering this bill. It is very much an evidence-based bill that is in line with the most contemporary social science research and neurodevelopmental research. We have seen this in a handful of legislatures across the country, and I think you have an opportunity to really be a thought leader in this space. As a scientist, I always strongly promote and endorse evidence-based bills, and A.B. 193 definitely falls into that category.

Jensie L. Anderson, Professor, S.J. Quinney College of Law, University of Utah, Salt Lake City, Utah:

I am also a founder and former legal director of Rocky Mountain Innocence Center, which is the regional member of the Innocence Network, whose mission is to prevent wrongful convictions in Utah, Wyoming, and Nevada. I am here in enthusiastic support of A.B. 193. We were able to pass a similar bill in my home state of Utah last year, and I am thrilled that the Nevada Legislature is considering this bill. One of the most counterintuitive aspects of human behavior is the decision to confess and, in particular, to do so falsely.

While many understandably believe that a false conviction is atypical, we have discovered through DNA-based exonerations that it is a frequent contributing factor to wrongful convictions. In fact, it is the most common contributing factor among homicide exonerations, and it is present in 30 percent of all exonerations proven through DNA. One leading study of 125 proven false confession cases found that 63 percent of the false confessors were under the age of 25, and 32 percent were under the age of 18. Another respected study of 340 exonerations found that juveniles under the age of 18 were three times more likely to falsely confess as adults. Leading law enforcement organizations, such as the International Association of Chiefs of Police, also agree that children are particularly likely to give false confessions during the pressure cooker of police interrogation. In Nevada alone, Robert Hays, Cathy Woods, Kirstin Lobato, and Fred Steese were collectively wrongfully convicted and imprisoned for over 85 years due in part to false confessions. The criminal justice system, as Nathaniel Erb pointed out, with the protections in place now, does not work to identify an innocent person who may have falsely confessed.

Courts weigh the veracity of confession, and whether it is coerced or not, they look at the totality of circumstances, which is why we have 400 examples of false confessions having

been admitted in court. Judges and juries tend to believe confessions even when there is conflicting DNA evidence since, historically, it is impossible to discern a true confession from a false one. As Mr. Erb pointed out, the Supreme Court has established that there is no constitutional reliability requirement for the admissibility of confessions. In the past, most courts consider confessions voluntary and therefore admissible as long as the police provided *Miranda* warnings and the defendant knowingly waived them. The existing framework just does not identify coerced or unreliable confessions, and as a result, exonerations involving false confessions repeatedly occur.

Thus, coming to you from the innocence perspective, we again enthusiastically support A.B. 193, believe that it is good policy, and I would encourage you to listen to all of these experts who have testified and pass this bill.

Mark Fallon, Visiting Scholar, John Jay College of Criminal Justice, City University of New York; and Co-Founder/Director, Project Aletheia:

I am testifying in support of the bill to ban deception and deceitful police tactics during interrogation. Following the attacks of September 11, I was a Naval Criminal Investigative Service (NCIS) special agent and led the Pentagon task force established to investigate terrorists for trials before military commissions. I have seen firsthand the consequence of inept practice and the desecration of the dignity of victims on both sides of the interrogation process. I have served as the director of the NCIS Training Academy and as assistant director of training of the Federal Law Enforcement Training Center. I spent four years on a 15-person global steering committee in furtherance of the United Nations initiative to develop a universal interviewing standard with an advisory council of over 80 experts from 40 countries.

The Méndez *Principles on Effective Interviewing for Investigations and Information Gathering* was published in May 2021, and this summer it was endorsed by the American Bar Association. The principles call for interrogation practice and training to be based on law, science, and ethics. I emphasize science for a reason.

I have been involved in interrogation research since 2010, when I was appointed to the U.S. government's High Value Detainee Interrogation Group (HIG) research committee, serving as its first chair [Exhibit G]. When the HIG was established, the U.S. government embarked on the most robust research program in the United States in interrogation in more than 50 years. More than 100 evidence-based and peer-reviewed studies were conducted. They support the efficacy of rapport-based approaches to obtain accurate and reliable information. This has been the catalyst for major reforms in interrogational practice. We know from this research that information-gathering methods are superior to confession-driven methods, which are proven to produce false confessions, wrongful convictions, and miscarriages of justice. Juveniles are especially vulnerable and are impacted by deceptive practice and by untrained, poorly trained, or improperly trained officers. Officers need training, not trickery and deceit.

The Méndez principles provide guideposts for interrogation practice that are effective and just. The Federal Law Enforcement Training Centers have revamped their training programs and no longer teach coercive methods. They now instruct in only science-based methods such as the strategic use of evidence in the cognitive interview rather than legacy practices that relied on deceit and coercion. Elite investigative agencies such as NCIS have rejected course of legacy methods and now only train in and utilize science-based interrogation methods. Yet there are still far too many confession-driven practices that exploit weaknesses and employ tactics that lack dignity. Especially at the state and local level, those have yet to embrace the science-based interviewing methods. Deceptive practice during custodial interrogation should be banned.

The IACP has a model policy that can be used to establish policies, and the Méndez principles should be used as guidelines for the development of necessary training programs. Trust must be restored between the police and the public we serve. Policing with virtue can foster public trust, uphold the rule of law, professionalize the practice of policing, and move us a step closer towards community-embraced policing. Thank you for the opportunity to speak with you today, and I urge you to support this bill.

Assemblywoman González:
I appreciate your patience with our different experts speaking on the issue. I wanted to put on the record that this is not a call-out or an attack on police. The intent of this bill is to protect our children, and with that, we will take any questions.

Chair Miller:
Are there any questions from Committee members?

Assemblywoman Bilbray-Axelrod:
I wanted to confirm that the bill that we passed last session was signed regarding the kids' *Miranda* rights, and I hope that is being used. In Nevada, parents do not have to be present for an interrogation. Do you know what age that starts at? Could a child as young as 8 or 9 be called in without a parent and have police interrogate them?

Chair Miller:
Would you like us to ask the Legislative Counsel Bureau's Legal Division? Even though he is not present, he is listening. I will give him a moment to respond, and we will come back to that.

Assemblywoman González:
I do want to note that in my conversations with police, we had a very large working group, and unfortunately, we could not find comfort before this hearing. You will hear them testify. They do mention that the *Miranda* rights are being stated. In those working groups, a couple of officers have given different examples, and where the *Miranda* rights are given, I think from our standpoint, a parent can waive a juvenile's constitutional right and not really understand what that means. Even though we have juvenile *Miranda* rights, I think these are further protections in place for juveniles when they are being interrogated.

Nathaniel Erb:
We strongly support having counsel in interrogation rooms. There has been concern amongst defense attorneys nationally that the inclusion of parents alone and without the presence of an attorney can actually negatively impact the rights of the child because parents can waive the rights of the child not knowing. Studies that have been produced around it have also noted that parents themselves are not aware that deception can be used, and the officer could be lying to the child in the circumstance. While it is a good protection, it does not wholesale protect against this situation. I believe in all likelihood law enforcement is not routinely lying to a child, but if someone breaks protocol, and a parent is not included, there is no protection on the backend for that child's confession in the courtroom.

Assemblyman Gray:
I really appreciate your trying to protect our youth. I do think, though, that deception does play a role in interrogations. I would like to see the threshold on this and see if you are amenable to maybe dropping it down to 14 and maybe adding something there that they will not be questioned without an attorney present or something of that nature. I think there are just too many instances in which they can use deception to trip up somebody's story or testimony, or if it involves more than one person, maybe get somebody to "roll" on another person. I hate to use that term. But sometimes that is what you have got to do to be able to get to the facts and then align the evidence and the forensic evidence with the truth. I do commend you.

I do know there are false confessions out there, but I would rather see rules put on that than just throwing the baby out with the bathwater, because I think it is a slippery slope; if you get into a court and, say, a law enforcement officer quoted the student or the child as saying, Well, you said you were here at this time, this time, and this time—knowing that was false—to see if the kid would change his story or stick with it. Now, the whole thing is thrown out because the officer used deception as opposed to an outright lie saying, Well, we know you did it and blah, blah, blah. I think it is too much at once. Would you be amenable to some kind of amendments along those lines?

Assemblywoman González:
We are open to solutions and conversations, and we welcome them, especially with our large group. I will definitely keep you updated in the loop as this progresses.

Assemblywoman Hardy:
I do not know if this may be a question later for law enforcement or others. You may not be able to answer this. Several times it was mentioned that over the decades there have been different methods developed, science-based methods like cognitive interviews, different ways of obtaining evidence and things like that. Do we use those methods here in Nevada when we are questioning children?

Assemblywoman González:
I think that is definitely a question for law enforcement to determine what tactics they are currently using.

Assemblyman Orentlicher:
One of the comments about how children think, and how they are very responsive to some promise of benefit makes me wonder about section 1, subsection 1, paragraph (b), about express or implied promise of leniency. The way it is worded is, it cannot be made by somebody who does not have authority to make that kind of promise. But presumably, would that mean if a prosecutor came into the room, that he or she could make that promise of leniency? And what kind of risks do we get of eliciting a false confession when the prosecutor comes in and makes that promise of leniency?

Assemblywoman González:
I am going to let Mr. Erb answer this one.

Nathaniel Erb:
I think it is certainly an area of concern that we have. The origin of that comes from the first state to pass this, which was Illinois, and the law was developed in partnership with the Cook County District Attorney's Office. They were trying to craft with this section, with us, a way to narrowly address the situation where an officer will often be authorized, or in conversation with the prosecutor, to provide some promise of leniency or say that we are going to work towards that. They wanted to say, Let us start out just getting at the situation where the officers themselves are providing or implying leniency could be provided, and they have not had a conversation with the district attorney—the district attorney has not offered anything whatsoever or said they were going to work on anything—and the officers are then knowingly lying or knowing that they have not had that conversation, we are getting at those situations first. I think we could look at how to fine-tune it so that we are capturing more situations of concern. But the intention was to start with that narrow situation where there has not been a conversation between the district attorney and the law enforcement officer or the interrogator.

Assemblywoman Hansen:
I heard Illinois and Utah mentioned. Could you tell us some other states that have this in statute or maybe something similar? And then just off of that, the Utah law is not this exact, and I am just wondering how it is different.

Nathaniel Erb:
Five states as of today have enacted legislation: Illinois, Oregon, Utah, Delaware, and California. Utah is the most stringent in terms of what would be captured. It is drafted very similarly with a little bit of wording change, but kind of narrowly, these two cases were very specific about those false facts being likely to elicit a false confession. That was a narrowing that was in conversation with law enforcement because it is governed in statute by their rule of evidence saying the state has to demonstrate that the statute was adhered to. If the state cannot demonstrate that the officer did not violate this act, then it is strictly not allowed in courtrooms.

All other states have allowed a little bit more leniency. Starting with Illinois and Oregon and also Delaware, where rather than a strict bar, all those laws have a little bit more broadness of their terminology of what is captured. But they are saying there is a rebuttable presumption that the statement is inadmissible [Exhibit H] and that the state would then just have to present evidence to show that the statement is still reliable and voluntary. No state has limited what those factors of reliability should be, but things that have been pointed to are, is the statement in direct contradiction with other evidence; did the statement lead to the discovery of new evidence that went to the person's guilt; did the contents of the statement originate entirely with the interrogating officer, meaning all the facts that made up the entire statement are actually facts that the officer themselves told the child and none of them originated from the child telling the officer that information.

All those types of information could be weighed by a court in determining, Yes, I realized the statute was still violated, but this proves that this is still reliable despite that. I think that goes to why other states have all pegged this at 18, and the move is now to move above that. Vermont has just moved a bill that is at 21, and it also mandates the standard policy across the state requiring deception not being taught for anyone including adults.

Assemblywoman Cohen:
You and I had spoken previously about the custodial interrogation requirement in section 1, subsection 1. Is custodial interrogation different for minors? For instance, does a child have the ability to get up and leave if the police come to the school and ask for a child to be brought into the principal's office and they ask them questions? Is that a custodial interrogation? Are there any guidelines or differences between when a child is being interviewed or questioned versus an adult? Could you go into some of those situations?

Nathaniel Erb:
It was pegged to custodial interrogation largely because Nevada, as well as many other states, require the recording of interrogations. If we are going to be able to challenge the veracity of a statement, we should make sure it is recorded so that it could be investigated and it is not a swearing contest between who said what and when. Custodial interrogation is a well-defined term both in Nevada and across the country. In general terms, when a person views himself to be under arrest, unable to leave, and it is kind of a mindset but well established in the state. There is consideration that a juvenile might view more situations in which they cannot leave due to the presence of the adult or interrogator versus what an adult may view. That would be up to the courts, and I think it is a well-established principle at this point. The answer is a little bit glossy, but I think it answers the question.

Assemblywoman Newby:
This may be better handled by police, public defenders, or district attorneys, but I figured you have so much background on this topic, perhaps you would know if there is any special training that is given to the interrogators, district attorneys, or public defenders about dealing with children and their unique developmental stages and how to best serve children in this context?

Nathaniel Erb:
I cannot speak to specifically here in Nevada. I would defer to our law enforcement partners on what exactly their individual agencies are trained in. I will say, the International Association of Chiefs of Police report we referenced which first called for abandoning of deceptive and coercive tactics in this manner, back in 2012, was developed because the IACP found that training largely across the country was uniform for both adults and children. There needs to be a separate subset of training directly focused on how to work with a child, taking into account the prevalence of false confessions, taking into account the science we know about brain development. Through the development of the initial steps of that training that has been followed up on, one of the first things that they directly called against is, do not use deceptive tactics, do not imply leniency, because that is going to lead you down a bad road. But I cannot speak directly to what exactly law enforcement here in Nevada is trained on.

Assemblywoman La Rue Hatch:
As someone who teaches 14-, 15-, and 16-year-olds, I know exactly what you are talking about with the youth brain, and I can tell you they are children all the way up to 18 and even beyond, as your researchers shared. My general policy is we should not lie to children. It does not usually end well in my practice with students. I just wanted to speak a little to Assemblyman Gray's concerns about an officer lying to a child and not realizing they are lying and then the case falls apart. Under this bill, if an officer is telling them information that they believe at that moment to be correct, that is still protected. Is that correct?

Nathaniel Erb:
That is still protected. I think it is still a concern if an officer unintentionally provides false information, which can still have the same dramatic effect on a child in causing them to falsely confess to the crime because the effect of the information is still true. But for the sake of crafting a bill that everyone can feel comfortable with and no one is going to feel left out in the cold for making an unintended mistake, all the states have chosen to parse this along the lines of knowingly so that there was a knowing intent by the officer to violate the act, to knowingly provide that false information. They would have the knowledge about what is true and what is not true, and the defense attorney would have to prove that they had a knowledge and an intent to violate that.

Assemblyman Yurek:
I appreciate your also reaching out the other day and having communications with all the stakeholders to try to address this issue and maybe head off any potential problems. I think something to clear up what the Assemblywoman just said, and you even said in your response, it looks like the language in there says "knowingly." I think it would be a good idea to add "knowingly with the intent to provide." That would clear up some potential concerns that could result as a consequence of not having that in there.

I understand that confessions as a general rule are not the sole basis for a conviction, and while I applaud the effort to try to avoid false confessions, I do know that as it stands now,

confessions are viewed under the totality of the circumstances by the triers of fact to try to determine its reliability already. As I look at this issue as a legislator, I am always trying to figure out any proposed policy. Are we trying to head off or address a real problem? In my 20 years' experience as a law enforcement officer, I was unaware that there was a significant problem with this. If it is a big problem, I am wondering, is this a solution that is in search of a problem? Do we have specific data, either nationally, or even more importantly, here in Nevada, that indicate that we are, as a result of these interrogations and interview tactics currently being used by law enforcement, leading to a high number of false confessions?

Assemblywoman González:
For people under the age of 18, I think that maybe the public defender's office and the police can speak more to that. In terms of Nevada in general, I think in the next bill, you will hear how we have been the center of national attention for false confessions and what that has led to four people being incarcerated. I think Mr. Erb has more that he can speak to on that.

Nathaniel Erb:
I think that is a simple, easy change that clarifies things, and I think that is part of the process. I am thankful to law enforcement and district attorneys for working with us to make this fit into Nevada's context. For data from the Innocence Project, we focus first on wrongful convictions, so cases of people who have been imprisoned largely for 20 to 30 years before it is finally revealed. Just looking at those cases alone, there have been 400 false confessions nationally that have been proven already since 1985; four of those have happened in Nevada. None of those have been of children but they have been of adults. The developmental challenges of children—I think there is a nexus between those two. That does not account for how many cases that do not go to trial in which the child did falsely confess; how many cases are thrown out or that were tried correctly but the person falsely confessed or provided a false statement, but there was other evidence pointing to their guilt that was not challenged through the post-conviction context.

I will also point to some of my colleagues here this morning who I think can follow up with some more data from their research of the IACP, basing their recommendations off of the data of brain science and false confessions; interrogators like Wicklander-Zulawski basing it off of other data; and then Dr. Cleary, with her current research, and research she has learned off of, around how this all leads into that there is a higher probability of this happening and if there is validity of other tactics. The United Kingdom has been using nondeceptive tactics for over 25 years and has had flying success. Why would we not move to those other areas?

I also want to correct—the current constitutional standard for weighing under the totality of circumstances is voluntariness. The Supreme Court has said voluntariness does not necessitate reliability and it is up to the states to determine if there are other evidentiary rules that need to go at how do we ensure that confessions are reliable even if they are voluntary.

Chair Miller:
Is there anyone who would like to testify in support?

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
False confessions and convictions of innocent persons are probably my greatest professional fears. This is a bill that would protect against that. This would put safeguards in place for children, who, as the speakers before us said, are the most vulnerable. I love my state. I love the people in my state. Look at our state's metrics; we are bad everywhere. We cannot think to ourselves that we are good in this part, where nobody else is really good in this part either. So given that this bill is evidence-based, science-based—we have looked at juveniles for a long time—this would be a good measure to pass.

I will say that the Rocky Mountain Innocence Center is the only regional innocence center, although a large majority of their cases come from the state of Nevada. We are woefully behind on investigating cases that we should be investigating, and in fact, only the most serious cases get investigated. The problem with juvenile cases is, it is a very rehabilitative system, where we say, Oh, well, we want to get this kid services, we want to do that, and we kind of just brush over if something went wrong or it actually was a wrongful conviction. These cases would be last to be investigated. They probably would be last for us to even get true data from, I would say. Even with that being said, this is a great measure. I urge its passage.

Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office:
I will tell a brief story about when I was in law school. My criminal law procedure professor, who was very adamant about teaching us that we did not have to allow a police officer to enter our home anytime they came, told us a story about how, during the semester, a police officer came to her door and she immediately let the police officer in. She offered him tea and sat down and began speaking to him because, in that moment, all of her training had gone out the window and she saw a police officer standing in front of her, and that is just what she thought she needed to do. This is a woman who was a law professor.

I want you to think about what happens when a teenager, a child, someone who does not have their parent with them and who is scared to death is looking at an authority figure who they may not be familiar with; what they are going to do or say, and we do not know.

This bill is an important first step. There are many good police officers out there, but every day we see evidence that they are allowed to, and they do, utilize a tactic of giving falsehoods in order to elicit information. When we are talking about adults, that is already a problem, but when we are talking about children, something needs to be done. We support this bill.

Tonja Brown, Private Citizen, Carson City, Nevada:
I am here representing Advocates for the Inmates and the Innocent. We are in strong support of this bill. We must safeguard the children, the juveniles. Over the years we have, and you, the legislative members, have heard studies conducted about the brain maturity not developing until the age of 25. I must say that over the last two decades, this has to have

been the best presentation I have ever seen. I hope that you feel the same way, and we strongly support that you pass this bill.

Chair Miller:
Is there anyone else who would like to testify in support?

DaShun Jackson, Director, Children's Safety and Welfare Policy, Children's Advocacy Alliance of Nevada:
The Children's Advocacy Alliance stands in support of A.B. 193. We urge the Judiciary Committee to pass A.B. 193 and put an end to deceptive interrogation practices in Nevada. These practices, as you heard, have led to false confessions and to wrongful convictions of innocent people. As someone that at the age of 14 was falsely accused of abuse allegations and was interrogated and that is what set off my fight for my freedom, I understand the importance of making sure that interrogations are done correctly, that youth have a voice, and that they are well represented. Under A.B. 193, statements given by juveniles would be inadmissible if law enforcement knowingly lied about evidence and/or gave unauthorized promises of leniency in order to elicit statements. The Children's Advocacy Alliance joins countless courts, national law enforcement organizations, interrogation researchers, and high-value detainees in advocating against the use of deceptive tactics.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
We are in strong support of A.B. 193. Of the 268 exonerees who are wrongfully convicted as children, 34 percent falsely confessed. Coercive and deceptive interrogation methods coupled with recognized vulnerabilities of children as a group have led to an unacceptably high rate of false confessions among juvenile suspects. The evidence is clear. The juvenile brain is wired to fall prey to deceptive interrogation tactics. Please support A.B. 193.

Jim Hoffman, representing Nevada Attorneys for Criminal Justice:
Nevada Attorneys for Criminal Justice supports A.B. 193. To explain why, I want to make an analogy. In Nevada, we have this great law enforcement institution called the Children's Advocacy Center. The people who work at this center interview children who are victims of crimes. The people are specially trained to talk to the kids to get an accurate, true picture of what happened so that the child's statement can be used in a criminal trial. One of the cardinal rules they have is that they let the kids describe what happened. They do not introduce any factual allegations. They do not make up anything themselves. They certainly do not lie because that would taint the statement and that would make it harder to hold the perpetrators in those cases accountable.

That is all A.B. 193 is asking for. Assembly Bill 193 would take this great standard that we already have for the Children's Advocacy Center and help apply it to all children. We believe that all children deserve a fair shake at the truth and so we support this bill.

Joseph Camel, Jr., Director, Cofounder, The Youth Voice of Nevada:
Assembly Bill 193 is great because it will go against forms of interrogation against a child that can intimidate them in any circumstance, especially with false information. In other

words, it goes against lying to a child, as a child is already fragile mentally and even more so with a peace officer or authority figure during the custodial interrogation. The greatness of this bill will prohibit such measures, stopping the falsehood that will do more damage than good. That is why we at Youth Voice Nevada support this bill.

Ayanna Oglesby, Private Citizen, Reno, Nevada:
I am in support of A.B. 193. I believe this bill is beneficial for the children, especially in the Black and Brown communities who are intimidated and very fearful of law enforcement. I believe A.B. 193 will add a layer of protection for those children who want to trust the police but are not able to trust the police. We are Nevada strong, battle born. We have a moral obligation to all Nevadans.

[Exhibit I was not discussed during the hearing but was submitted in support of Assembly Bill 193 and will become part of the record.]

Chair Miller:
Is there anyone else who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition?

Christopher M. Ries, Detective, Las Vegas Metropolitan Police Department:
As it is written, we are opposed to A.B. 193. Oftentimes we use various techniques to assist further investigations that ultimately make our communities safer. It should be noted that these practices also have been used to disprove a person's involvement in a crime, not only to gain confessions. To be clear, any juvenile taken into our custody and prior to custodial interrogation is read their *Miranda* rights. It was in Assembly Bill 132 of the 81st Session. We all use that. In fairness, our criminal justice system already has safeguards that ensure that confessions are voluntary and are not coerced. At a basic level, we need to trust our judges and established case law to determine the admissibility of those confessions.

One final point, a confession is not the end of the investigation. There is much more to a case than an admission, and we still need to investigate making sure that the person confessing to the crime actually committed that crime. We appreciate Assemblywoman González and her willingness to work with us, and we look forward to continuing to do so. Currently we oppose A.B. 193 but are hopeful that we can get to a position of support.

Jason Walker, Sergeant, Patrol Division, Washoe County Sheriff's Office:
We participated in the group meetings with Assemblywoman González. Unfortunately, our subject matter expert is unavailable today. I reached out to the detective division at the sheriff's office. Collectively they provided me some feedback that I would like to provide.

In summary, and from our collective detective experience with a variety of juvenile subjects related to sexual assault, burglary, murder, and other major crimes, each juvenile subject needs to be evaluated based on the totality of the circumstances, and law enforcement should consider the juvenile's age, education, intellect, and understanding of the situation. The goal of any juvenile interrogation should always be to obtain truthful statements

corroborated by evidence and case facts. There may be a scenario where use of false information about evidence could be appropriate for the case facts in a violent gang homicide by a 17-year-old suspect with a lengthy juvenile criminal history. I offer another scenario where a low-intellect, 12-year-old sexually assaults a 7-year-old cousin and is more likely to make an incriminating statement when presented with false evidence, but it might be inappropriate based on the totality of the circumstances. Each scenario needs to be evaluated with all the case facts and information about the juvenile suspect. Again, looking through the reasonableness standard, would a reasonable person find the juvenile's statements or admissions voluntary and reasonable based on the entire interrogation and the facts of the case presented. We practice good, forensically sound interview techniques that are used in child victim interviews. I am testifying in opposition based on how it is introduced. I am hopeful that communication continues and that we can get to a position of support.

And lastly, if I could follow up with Assemblywoman Hardy. In a nutshell, her question was, What is our current interview interrogation method? One child crimes investigator responded back with, "Interview techniques are similar to our victim's forensic interviews where our goals are person-centered, semi-structured, and forensically sound."

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:

We are in opposition to A.B. 193. I do want to start off by thanking Assemblywoman González and the Innocence Project. We have had several constructive meetings trying to get to a place where we can support this bill. We are not there yet, which is why, pursuant to Committee rules, we are here in opposition.

Brigid J. Duffy, Assistant Deputy District Attorney, Juvenile Division, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:

My opposition here this morning on behalf of the Nevada District Attorneys Association is not coming from a place that I believe that we should be lying to children in order to obtain confessions. In fact, Nevada case law currently prohibits that. Our case law that has been in effect since 1980 states clearly neither police officers nor juvenile authorities should be allowed to mislead a youth in order to obtain a confession. That case law actually goes on further to talk about how it is my burden as the state to prove the voluntariness of a child's statement and that could be based on things such as age and maturity of the child and the fact that the child has been read their juvenile *Miranda* rights.

When presented with this concept by Assemblywoman González and the Innocence Project, I was very concerned that under the last ten years of my tenure over the Juvenile Division that we are actually not doing a good job in ensuring the voluntariness of statements. I asked that very question that was asked by Assemblyman Yurek; What is my issue here? I take that very personally. And in fact, it made me feel much better to know that we have no examples of juvenile convictions on false confessions here in Nevada at this time. I would

equate that to the fact that we have had case law on the books since 1980 that has us having to prove the voluntariness of that statement.

I am coming from a practical place in opposition to make sure that when we look at the language of this bill, that it gives some guidance to practitioners in the courtrooms and does not forget that we are the ones that will have to determine what we are proving, whether voluntary or involuntary; or where we come from, whether it be the public defender's office or their conflict counsel or the state; and how we are doing it; and what the court is looking at to determine whether or not that statement is voluntary. We look forward to continuing to work with Assemblywoman González to ensure clear guidance for attorneys and courts in practice.

Chair Miller:
Is there anyone else who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? [There was no one.] I would invite the presenter back to the table for any concluding remarks.

Assemblywoman González:
In closing, you have heard from all of our partners on this. We are still working to get to a place of comfort. I do want to note on the record there were conflicting testimonies on, We do use this tactic; we do not use this tactic; it is outlawed. Again, the intent of the bill is to protect our children with respect to false confessions. You have heard from a number of experts. In closing, I hope that we get to a place where we can all agree on language.

Chair Miller:
We will formally close the hearing on Assembly Bill 193. I will now formally open the hearing on Assembly Bill 101.

Assembly Bill 101: Revises provisions relating to informants. (BDR 14-228)

Assemblywoman Cecelia González, Assembly District No. 16:
I am here today to present to you Assembly Bill 101, which relates to informants in jail or in prison. I just want to make a note of that very important fact that this is regarding informants that are incarcerated. This is not regarding confidential informants or any other types of informants that officers may use. Last session I appeared before this Committee and introduced the same bill. It passed in the Assembly, and unfortunately, died in the Senate, which is why I am here before you again today.

The Legislature passed Assembly Bill 267 of the 80th Session, which provided compensation for people who are wrongfully convicted. When Mr. DeMarlo Berry went to prison in 1994 for a murder he did not commit, it was a jailhouse informant who was an incriminating witness. Based on the informant's testimony, Mr. Berry was convicted and sentenced to life in prison. However, in 2014 the informant admitted that he had lied and also received benefits for his false testimony. Testimony from jailhouse informants is one of the leading contributors to wrongful convictions, as you heard this morning, playing a role in nearly one

in five of the 367 DNA-based exoneree cases nationally. As you have also heard, four of those cases were right here in Nevada.

Who is an informant? An informant is an individual who provides testimony or information about statements the defendant made while they were incarcerated together. Informants often receive a benefit from prosecutors for such information, usually in the form of a plea bargain or a reduced sentence on their own criminal charge or a dismissal of their case entirely. Informants can also receive financial incentives or other special benefits while in custody for their testimony. At the very least, the use of jailhouse informant incentives is a distortion to our criminal justice system and more importantly, the use of unregulated jailhouse informant testimony sends innocent people to prison. I will not go through the sections of the bill. However, Chair, with your permission, I am going to turn the presentation over to Mr. Nathaniel Erb from the Innocence Project who does have more details on the four cases in Nevada.

Chair Miller:
We would prefer to hear an explanation of the details of the bill. We appreciate the background and the data, but if we could actually go through the policy first.

Assemblywoman González:
Sections 2 through 5 provide definitions. Section 6 provides that the office of the prosecuting attorney must maintain complete and systematic records of any cases prosecuted by the office in which the testimony or information was provided by an informant pursuant to a cooperation agreement. Section 7 provides that if a prosecuting attorney intends to use an informant's testimony or information at a hearing or trial, that certain information or materials must be disclosed to the defense as soon as possible, but no later than 30 days before the hearing or trial. In section 7, subsection 3, the court may order the disclosures to only be made to the attorney for the defendant and not to the defendant or any other party, if making the disclosures may result in substantial bodily harm to the informant. Lastly, in section 7, subsection 4, a court is required to instruct the jury to consider certain information in assessing the credibility of an informant. I will have Mr. Erb go over the amendment [Exhibit J] from last session.

Nathaniel Erb, State Policy Advocate, Innocence Project of New York:
I want to thank Assemblywoman González and the Nevada District Attorneys Association for working with us closely last year and over the interim on this bill to a place where we are all excited to move it forward. There is a substitute amendment [Exhibit J] that captures language that I messed up and forgot to add that we had agreed to with the Nevada District Attorneys Association. Largely, that adds a lot of clarifying language but also limits the bill to make sure that we are only talking about situations in which an informant is actually providing testimony in a court case and not just when they are providing information as background.

The text of the bill, and the purpose of the bill itself, comes actually from district attorneys' offices in Texas, similar to Assembly Bill 193, also coming from district attorneys' offices.

In Texas, when they found there was a prevalent use of jailhouse informants in wrongful conviction cases and they found that it was on them that information was not being turned over as was constitutionally required, they found that there was a lack of clarity over what the *U.S. Constitution* requires to be turned over as impeaching evidence through *Brady v. Maryland*, and there were not complete records. So individual offices themselves, even if one district attorney's office had a lot of good recordkeeping on where informants are being used, how often they are being used, the deals that are being struck, they could not rely on other offices to have that same information so they could cross-reference to see if this person was testifying across multiple jurisdictions, constantly receiving benefits, asking for things, and they are potentially unreliable.

As Assemblywoman González mentioned, there have been a number of cases here in Nevada, as with other states, where it is found through post-conviction that a lot of information is not provided at the original trial to be able to properly impeach and provide testimony that goes to the credibility of the informant and that could have helped identify that that person actually was lying at the time of the trial, that they never heard information from the innocent person when they were incarcerated together. I also want to clarify, as Assemblywoman González mentioned, that this only touches on situations where you have someone who is incarcerated in jail with the person who is the defendant, and they have a conversation in that context, and that person is then receiving a direct benefit in exchange for providing testimony to the state. It would not touch on other types of information that is gathered. It would not touch on situations where someone outside of a prison or providing any other type of witness testimony.

Largely the bill already tracks what is current best practice here in Nevada. The first sections of the bill covering disclosure tracks and clarifies what should be disclosed under existing constitutional requirements as other states have established. The other portions of the bill regarding what records attorneys' offices should keep tracks what the Nevada District Attorneys Association voted to adopt in 2018. This just makes sure that practice goes forward.

The only large piece in the bill that is not existing practice is adding an extra safety valve that requires that if the district attorney feels that some information they are providing to the defense through discovery potentially could be harmful to the individual, they could then present that to the judge and there could be a discussion over whether or not that information should be provided or provided in some type of protected context. That existing protection is something that does not exist currently under law, but the information covered that is required to be disclosed through the bill is all information that is currently required to be disclosed. This really just clarifies a lot of what should happen in all these contexts and makes sure we avoid these cases in the future.

[Exhibit K and Exhibit L were not discussed during the hearing but were submitted in support of Assembly Bill 193 and will become part of the record.]

Chair Miller:
Are there any questions from the Committee?

Assemblywoman Mosca:
Looking at the amendment [Exhibit J], under section 6, is it records only when the testimony is used? Does that mean if something was promised and it was not actually in testimony, that it is not recorded somewhere, or do we have records of that as well?

Nathaniel Erb:
It is likely that the officers are already keeping track of those records. This just requires that if someone actually is provided a benefit in exchange, that we are keeping a record of the benefit that was received in the case in which it was testified. If that informant is then later testifying in another case and provided a benefit, that information can be turned over to the defense, to provide, OK, this person is providing information and testimony in exchange for a benefit here, and they have also provided it here in all these other contexts.

Assemblyman Yurek:
I really appreciate the effort in section 7, subsection 3 to address the potential safety issue of these informants who come forward. We know that they provide a lot of information and intelligence that actually helped to keep our prisons and our jails safe, and that always has to be balanced with, there is a big risk, right? We have all heard of the phrase "snitches get stitches." There is a big risk for people to come forward. I appreciate the effort to put that in there. In that section, it says that if a judge finds that the information provided could lead to the possibility of somebody suffering substantial bodily harm, that it would then be viewed by the defense attorney alone. I appreciate that, but I am wondering, as a practical matter, how does the defense attorney then use this information for the intended purpose without compromising the safety of that informant?

Nathaniel Erb:
First, I want to set the ground rules that all the information covered by the bill is already currently disclosed or at least should be unless the *Constitution* is being violated, which I do not think it is constantly. The way this has functioned in other states is, the court could say, We are giving the records, this information is for your review to provide backgrounds on information, it cannot be used in the courtroom, or it could be used in the courtroom in this context. If you violate that, you will be sanctioned as a representative of the court. It is largely up to interpretation of rules of how it would function here in Nevada. It has not really occurred that much.

Largely, this has just been a safety valve. It has not actually come into play a lot in all the states that have passed this. It is just an extra guardrail because the information covered in the bill is already information that is constitutionally required to be disclosed. If a defendant was representing themselves pro se, it is information that is constitutionally required to be handed over anyways. I would imagine that a sanction would be put in place if the attorney was violating it and they are not using that information just on background.

Assemblywoman Cohen:
Section 7, subsection 4, should the list that is paragraphs (c) through (f), be paragraphs (a) through (f)?

Nathaniel Erb:
Thank you, Assemblywoman Cohen, for pointing this out to me yesterday. Yes, it should be.

Assemblywoman Cohen:
Could we do an amendment for that?

Chair Miller:
Thank you for that technical amendment. Is there anyone who would like to testify in support?

Tonja Brown, Private Citizen, Carson City, Nevada:
We are submitting our written testimony and exhibits [Exhibit M]. Assembly Bill 101 is a very good bill; it is long overdue. However, we do believe that this bill should be expanded—if not in this legislative session, then in 2025—section 7, subsection 2, to include a subsection (c): That if the prosecuting attorney as described in subsection 1 withholds evidence that is favorable to the defendant or would call into question the credibility of the witnesses and/or an informant's testimony, the defendant must receive a new trial. We based this on the following reasons. In 2009, a court order was issued to turn over the district attorney's file in the Nolan Klein case. In the file, statements were made by one of the State's witnesses. This witness was an informant. She was the leak to the police. She was paid for her testimony through Secret Witness.

We have provided you with those documents to support our testimony and the courts have continued even to this day, to rely on her truthfulness, her credibility, when she had motive and reasons to lie. We would also ask that you take a look at the exhibits; some of the exhibits are the investigative notes that were turned over, and that information does support the testimony and it goes against *Brady*.

Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office:
We are in support of this bill. You may have noticed over the past few weeks that I and my colleague, Mr. Piro, often take a different position and have a different perspective on cases than our colleagues on the other side of the courtroom. I want you to think about that when we are thinking about codifying what is required to already be turned over to us. When so many people take different positions on cases, what can occur is that certain information is not always turned over to the defense and sometimes that does include information regarding confidential informants. There is no evidence that is less reliable than confidential informants and that is especially true when we are talking about jailhouse informants.

Lawyers are often told not to use the word "lying" when in court, but you may have also noticed that I can be quite blunt, and I want to use terminology that is truthful here: confidential informants can lie. They can give lies to a police officer that will result in false convictions of individuals, and that information needs to be turned over to the defense. This is a tool. This does not change the law. It does not take away any ability of law enforcement to do their job, but this makes very clear what does in fact need to be turned over to the defense. That is why we are supporting this bill.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I want to thank Assemblywoman González and the Innocence Project for coming here and continuing to work on Nevada's issues to make our criminal justice system more fair, more transparent, and better all around. One of the things that happens when I represent clients is that they ask for their discovery in jail. One of my concerns with sending the discovery to the jail is this scenario precisely: their cellmate reads the discovery and then they are like, oh, he totally told me what happened, he totally confessed to everything. He basically gives the police and the district attorney a verbatim accounting of what happened from what was written in the police report. Then it sounds very credible, even though it is not credible. So that is one of my concerns.

As Ms. Anderson from the Rocky Mountain Innocence Project spoke, part of that is what happened to Mr. Berry, and that is highly concerning. I think even one person sitting in custody for years of their life for a crime they did not commit is a problem. And Nevada has been paying millions recently in the last couple of years for those issues. This is something that would stop that. I highly urge that we pass this measure.

Chair Miller:
Is there anyone else who would like to testify in support of A.B. 101?

Jim Hoffman, representing Nevada Attorneys for Criminal Justice:
Nevada Attorneys for Criminal Justice supports A.B. 101. As with Assembly Bill 193, we believe the core issue here is truth. The point of the justice system is ultimately to find the truth. We cannot do that if we do not have all the information. If the defense does not know whether someone is a jailhouse informant, they cannot put that fact before the judge and the jury. If the judge or the jury do not know whether someone is a jailhouse informant, they cannot fairly judge whether that person is credible, whether they are telling the truth or not. The justice system needs this information to be provided to make sure that our trials are fair and accurate and lead to a true result. Assembly Bill 101 will help us get there, and we therefore support it.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
I am in support of A.B. 101. I want to point out that the exhibits [Exhibit M] you have been provided in support of our testimony include handwritten notes of a prosecuting attorney on the defendant's motion for discovery which say that any information reflecting upon the credibility of any prosecution witnesses including, but not limited to, criminal records, prior

inconsistent or contradictory statements, oral or written, and any consideration of paid promised or expected for testimony or information provided or to be provided, in this case *Brady*, and what did the district attorney write next to number seven? He wrote no.

As advocates for the inmates and innocent, in our research to help the wrongfully convicted, we have come across exculpatory evidence related to jailhouse informants that would tie an inmate already serving on death row for two murders to a third murder that another man was convicted of. This death row inmate was a suspect in this third murder. This jailhouse informant's information implicated the death row inmate in the three murders. Two of the victims can be found in the desert and one in Reno. This information is critical to an inmate who has always maintained his innocence and this information could exonerate him. Please expand the language to allow the wrongfully convicted a chance at a new trial and their freedom into this session or in 2025. We support A.B. 101, and we encourage you to do so as well.

Ayanna Oglesby, Private Citizen, Reno, Nevada:
I am in support of A.B. 101. Primarily, I am very familiar with the situation where a jailhouse informant, in writing the district attorney and judge, referred to him as a "credible witness." That same credible witness that is a jailhouse informant is also incarcerated in another location outside of Nevada for like charges. Now I am familiar with several cases, but I am almost certain that there are hundreds right here in our state of Nevada. We are not oblivious to people wanting to get lesser time. There was a cliché down in Clark County. The police who used informants would say, Give us three and you will fly free, which indicates that the person who is the informant had to tell on three other people in order to gain their freedom.

It is imperative that we initiate this bill and enforce it because people do want their freedom and they are willing to do anything that it takes. Now I concur with the advocates for the innocent, Ms. Grant, and those in favor of this bill, and I would strongly encourage you to pass this bill. We are Nevada strong; we are battle born, and again, we have a moral obligation to all Nevadans.

Jennifer P. Noble, Chief Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Based on the conceptual amendment posted to Nevada Electronic Legislative Information System this morning [Exhibit J], we do support A.B. 101. I want to start by noting with the incorporation of the conceptual amendment, this bill is not designed to replace or extend the cases of *Brady*, *Giglio v. United States*, or the prosecution's constitutional obligation to disclose exculpatory or impeachment information under current law. Instead, what this is doing is creating a mechanism by which a prosecutor's office will track these incarcerated persons who enter into cooperation agreements from administration to administration. In other words, they are offering information or testimony in exchange for a plea bargain, reduction of sentence, or immunity. In the context of a criminal trial, these types of agreements would fall into the category of impeachment information that we are required to give to the defense.

The vast majority of district attorneys' offices in Nevada have already adopted policies in place that are consistent with this bill as it is modified by the conceptual amendment. What we are doing here is making sure that these policies survive from administration to administration. I would also like to thank Assemblywoman González and Mr. Erb from the Innocence Project for working with us last session and this session. We all approach this issue in good faith, with a willingness to work, and the result is the bill with its conceptual amendment. We are in support.

[Exhibit N was not discussed during the hearing but was submitted in support of Assembly Bill 101 and will become part of the record.]

Chair Miller:
Is there anyone else who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? [There was no one.] I would invite the presenter back to the table for any concluding remarks.

Assemblywoman González:
I wanted to note for those that are new to the Committee, if you have the time to go back and watch A.B. 267 of the 80th Session, it is the genesis of how we got to A.B. 101—just some more background information on that and really the cases that came out of Nevada due to this. I also want to thank all of our law enforcement and district attorneys' offices that worked with us to get to a really good place on this bill.

Chair Miller:
I will close the hearing on A.B. 101. I will open it for public comment. [Public comment was heard.] We will be back here at 8 a.m. tomorrow. This is meeting is adjourned [at 10:44 a.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 written testimony in support of Assembly Bill 193, dated March 1, 2023, submitted and presented by Nathaniel Erb, State Policy Advocate, Innocence Project.

Exhibit D is a document titled, "Support AB193: Prevent False Confessions in Nevada," submitted and presented by Nathaniel Erb, State Policy Advocate, Innocence Project.

Exhibit E is a letter dated March 1, 2023, submitted and presented by David Thompson, Certified Forensic Interviewer, President, Wicklander-Zulawski & Associates, Aurora, Illinois, in support of Assembly Bill 193.

Exhibit F is a document titled, "Expert Summary Brief," submitted and presented by Hayley Cleary, Associate Professor of Criminal Justice and Public Policy, Virginia Commonwealth University, Richmond, Virginia, in support of Assembly Bill 193.

Exhibit G is a copy of an article titled, "Using Science to Improve the Practice of Interviewing and Interrogation," by Christian A. Meissner and Mark Fallon, submitted by Nathaniel Erb, State Policy Advocate, Innocence Project; and discussed by Mark Fallon, Visiting Scholar, John Jay College of Criminal Justice, City University of New York; and Co-Founder/Director, Project Aletheia.

Exhibit H is a proposed amendment to Assembly Bill 193 submitted by Assemblywoman Cecelia González, Assembly District No. 16.

Exhibit I is a letter dated March 1, 2023, submitted by Battle Born Progress; Clark County Public Defender's Office; Faith in Action Nevada; Innocence Project; Progressive Leadership Alliance of Nevada; Return Strong!; and Washoe County Public Defender's Office, in support of Assembly Bill 193.

Exhibit J is a proposed amendment to Assembly Bill 101, submitted by Assemblywoman Cecelia González, Assembly District No. 16, and presented by Nathaniel Erb, State Policy Advocate, Innocence Project.

Exhibit K is written testimony dated March 1, 2023, submitted and presented by Nathaniel Erb, State Policy Advocate, Innocence Project, in support of Assembly Bill 101.

Exhibit L is a document titled, "AB101: Transparent Use of Jailhouse Informants," submitted and presented by Nathaniel Erb, State Policy Advocate, Innocence Project.

Exhibit M is a letter dated March 1, 2023, with attached documents, submitted and presented by Tonja Brown, Private Citizen, Carson City, Nevada, in support of Assembly Bill 101.

Exhibit N is a letter dated March 1, 2023, submitted by Battle Born Progress; Clark County Public Defender's Office; Faith in Action Nevada; Innocence Project; Progressive Leadership Alliance of Nevada; Return Strong!; and Washoe County Public Defender's Office, in support of Assembly Bill 101.