MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-second Session
May 5, 2023

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:01 p.m. on Friday, May 5, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

GUEST LEGISLATORS PRESENT:

Assemblywoman Jill Dickman, Assembly District No. 31
Assemblywoman Selena La Rue Hatch, Assembly District No. 25

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Karly O'Krent, Counsel
Kelsey DeLozier, Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Zach Conine, State Treasurer
Serena Evans, Nevada Coalition to End Domestic and Sexual Violence
Jason Walker, Washoe County Sheriff's Office

Jennifer Noble, Nevada District Attorneys Association
Beth Schmidt, Las Vegas Metropolitan Police Department
Susan Proffitt, Vice President, Nevada Republican Club
Julie Hereford, Nevadans Citizen Action Network
Melissa Clement, Nevada Right to Life
Nicole Rourke, City of Henderson; Henderson Police Department
Pamela DelPorto, Nevada Sheriffs' and Chiefs' Association
Erica Roth, Washoe County Public Defender's Office
John J. Piro, Clark County Public Defender's Office

CHAIR SCHEIBLE:
I will open the hearing on Assembly Bill (A.B.) 55.

ASSEMBLY BILL 55 (1st Reprint): Revises provisions related to unclaimed property. (BDR 10-360)

ZACH CONINE (State Treasurer):
Assembly Bill 55 makes various changes to Nevada's unclaimed property laws. The bill follows national best practices to help modernize and align our statutes with those of other states. Pursuant to *Nevada Revised Statutes* (NRS) 120A, the Office of the State Treasurer administers the unclaimed property program. The Office takes custody of lost or abandoned property from individuals or business holders and works to reunite it with its rightful owners. When property cannot be reunited with its owner, it is held in perpetuity by the State.

I would encourage everyone to search for his or her name on the Office website to see if the State is holding any of your money. It takes less than a minute to search.

In 2022, our Office processed and approved 37,290 claims, which resulted in a return of $42 million on the property holders' side. In fiscal year 2021-2022, holders reported and remitted more than $83 million in unclaimed property to our Office. Since I took office, we have returned more than $200 million in unclaimed property—a record for any four-year period in State history.

Sections 2 through 6 and 14 and 15 of A.B. 55 make necessary cleanup changes such as ensuring continuity, definitions and updated references to other sections being changed. Section 7 makes various changes to NRS 120A.500, outlining what kind of property needs to be reported and when

that reporting must happen. These changes are technical and designed to clarify many of the more nuanced questions that arise in our holders and audit working groups related to specific industries such as insurance, retirement and pre-need funeral service contracts.

Section 8 of A.B. 55 clarifies the presumed abandonment date for gift certificates and removes an existing statute that makes owners' last known addresses for gift certificates the Office of the State Treasurer. This had created a different standard among property types. We would like to ensure they are properly aligned and reported in the same manner. Section 9 updates how and where the holder of unclaimed property should report to our Office.

Sections 10 and 11 replace requirements that our Office purchase print advertisements. Earned media receives a much greater response than publishing ads in newspapers. We have also adopted an active return model seeking out Nevadans to whom we can remit unclaimed property. The updated language requires the Office of the State Treasurer to provide notice in a press release and through publishing a public notice, which we believe fulfills the spirit of existing requirements without mandating the expenditure of advertising dollars.

I would note while this update does not mandate the purchase of ads, it does allow the Office the option to, for example, buy targeted digital ads, banner ads at events such as career affairs, et cetera.

Section 12, subsection 2 of A.B. 55 allows the Office to accept property prior to it being deemed abandoned by statute if we believe it to be in the best interest of the State. This happens most often when a business dissolves and then finds itself in a position of trying to make sure all the property can be turned over but it has not yet reached the age where it would a shift naturally to our Office.

Section 13 updates existing law to allow our Office to seek records from State and local agencies that would otherwise be deemed confidential. As background, when the COVID-19 pandemic began, the Office looked for ways we could assist Nevadans who are hardest hit and struggling. We teamed up with the Nevada Department of Employment, Training and Rehabilitation to use the unemployment insurance claimant list to cross reference our property database to determine if we were holding unclaimed property. Over the course of the initiative, we returned more than $2.3 million in unclaimed property to

holders. However, statute did not allow us to automatically send individuals checks for their unclaimed property. Despite our database matching names, birthdates, social security numbers and addresses, each claimant had to be sent a letter with instructions on how to claim his or her property.

To remedy this, our Office proposed S.B. No. 71 of the 81st Session, which allowed the Office to initiate a claim on a property owner's behalf, allowing for even greater efficiencies when returning unclaimed property. When we began seeking additional opportunities to expand these initiatives, we ran into another issue: much of the information held by State and local agencies is—rightfully so—deemed confidential.

Section 13, subsection 3 of A.B. 55 gives the Office the ability to receive these records despite their confidential nature. For instance, imagine if we could automatically match individuals who hold the teaching license in Nevada with their unclaimed property. Section 14.5 grants our office the ability to establish regulations to protect property owners in agreement for return of their property.

Section 16 repeals a section of NRS 120A that defers any question of law to the Uniform Unclaimed Property Act. We sought this repeal for two reasons. The Act's specific uniform law cited has since been updated and will likely be updated again. Thus, the statutory references were outdated. More important, sections of the Uniform Act are incongruent with Nevada's legal framework.

SENATOR STONE:
Thank you for making the process easier for people to ascertain whether they have unclaimed property in the State system and making it easier for them to get that property returned. Is there time frame in which the State will gain possession of these assets, after which are reverted to the General Fund? It is 20 years, 30 years or just in that bank account forever until somebody claims it?

TREASURER CONINE:
We hold the property in perpetuity. If we are holding the property, the chance of it being returned diminishes. For example, the original claimant dies and then we have a long search for a niece, nephew, child or grandchild in order to return the property.

SENATOR KRASNER:
Section 10 says notice of property presumed abandoned in the form of stocks, equity, retirement accounts, virtual currency, et cetera, no longer needs to be published in a newspaper of general circulation not less than six times a year. I see you are trying to create just a database. That is good, but would you accept an amendment to publish it in a newspaper of general circulation one time?

TREASURER CONINE:
Here is what we found: publishing property lists in newspapers is creating almost no additional claims. We go to newspapers and say, "Hey, you know, *Elko Daily Free Press* or *Nevada Appeal* or whatever, if you publish the website address, we are able to get people to fill out unclaimed property claims." We also have people who walk into Treasury offices in Carson City and the Las Vegas Grant Sawyer Building to fill out claims.

The information in newspapers is so ineffective that returning property becomes a staff burden to place those ads, as opposed to returning dollars online. Also, the database includes thousands of potential pieces of property, and people move. If we are listing property that is supposed to be in Las Vegas, but the holder has moved to Gardnerville, he or she will never see the notice in the paper. We want to focus our efforts on places where people are looking.

SENATOR KRASNER:
I appreciate that you find newspaper notices ineffective, but not everybody has access to the Internet. A lot of people in the rurals have spotty connections, no Internet access and no computer. They rely on their newspapers. The current law says not less than six times; I am asking if you could do it once per year.

TREASURER CONINE:
I am happy to consider that, Senator.

SENATOR OHRENSCHALL:
In reference to section 10, I represent an urban area but a lot of my constituents are seniors who still look to newspapers for information and notices. What is the expense to publish the list of unclaimed property? How much do you project will be saved by going 100 percent online? In an ideal world, I would like to see information on the Office website and in newspaper

press releases. At least some publications still happen for people who still like to consult the newspaper.

TREASURER CONINE:
We can follow up with the exact cost; it is in the thousands of dollars a year. The press is only one of the marketing contracts through which we can reach people. As evidence of the success of the website, we have had more than 40 percent more claimants for all of last year and this year to date. Through the press, we returned more unclaimed property than any Office in history. It was almost all earned media.

By definition, when we use unclaimed property dollars to advertise, we are taking away from the dollars that can go back to the General Fund annually. However, we can give you the exact savings number later. It is in the thousands, not in the twenties of thousands, of dollars.

SENATOR OHRENSCHALL:
The language repealing NRS 120A.750, on the final page of A.B. 55, states, "This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of the Uniform Unclaimed Property Act among the states that enact it." If that is deleted, could there be an issue if someone has unclaimed property in multiple states in terms of trying to work across other states through the Uniform Unclaimed Property Act? My concern is if we do not look to the Act for guidance, there may be people with unclaimed property in multiple states that have adopted the Act. Do you see that as a problem?

TREASURER CONINE:
We want to make it as easy as possible for holders to report and for my Office to turn over unclaimed property. Only a couple of states have fully adopted the Act; two years ago, there were none. Most states have different unclaimed property laws, so holders are working across the spectrum to make sure they are getting their returns.

The moderate differences between our laws and the Act are intended to teach Nevadans. What I expect is, as the Act continues to progress, we will continue to get more states on board with it, just as we have with uniform property laws that have been around longer. We are continually looking for ways to make sure it works for us.

CHAIR SCHEIBLE:
I will close the hearing on A.B. 55 and open the hearing on A.B. 356.

ASSEMBLY BILL 356 (1st Reprint): Enacts provisions relating to mobile tracking devices. (BDR 15-1007)

ASSEMBLYWOMAN JILL DICKMAN (Assembly District No. 31):
Assembly Bill 356 would make it a crime to place a mobile tracking device on someone's vehicle without his or her consent. As many of you know, recently several elected Nevada officials have been the victims of a serious invasion of privacy: they were targets of unwarranted GPS tracker placement. They have had devices placed on their vehicles and those of family members at a time when threats and harassment of public officials and their families has become more common.

The placement of mobile tracking devices is a violation of privacy and brings distress, fear and potential danger to a victim. Although this issue has made the headlines recently, it can impact anyone; stalking-related incidents using technology are on the rise. It is estimated that 14 percent of stalking victims were tracked with an electronic device.

When I learned of these incidents happening in Nevada, I was appalled to learn placement of tracking devices is not a crime. Several people contacted me who were as incredulous as I. This type of tracking is only legal because nothing in NRS specifically prohibits it, incredibly so in this age of advancing and low-cost new technologies. The use of these devices is becoming more and more prevalent. They can remain active for months and even years without being detected.

ASSEMBLYWOMAN SELENA LA RUE HATCH (Assembly District No. 25):
This is a bipartisan issue, a concern that affects everyone regardless of your political party or where you are from. I am concerned about privacy and protecting victims of stalking and abuse.

The purpose of A.B. 356 as noted is to prohibit an individual from installing a mobile tracking device. Section 1, subsection 1 says,

> a person commits the crime of unlawful installation of a mobile tracking device if the person knowingly installs, conceals or

> otherwise places a mobile tracking device in or on the motor vehicle of another person without the knowledge and consent of an owner or lessor of the motor vehicle.

Now, I want it clear this does not affect fleets, leases or rental cars because obviously the owners or lessees would know about tracking devices placed on their cars.

The bill does not prohibit you from putting a tracking device on your minor child's car. Whether the child paid for the car or the insurance him- or herself, you technically own the car; unless children are emancipated, they cannot register the cars in their own names.

Assembly Bill 356 contains exceptions. In section 1, subsection 2, a law enforcement officer can install a tracking device pursuant to a warrant or court order. The language is similar to that which many states have adopted. According to our research, there have never been cases of Nevada law enforcement needing to use a tracking device without a warrant or court order. The language allows law enforcement to do their jobs while also protecting individuals.

Punishments are listed in section 1, subsection 3. First offense is a misdemeanor, second offense a gross misdemeanor and third offense is a Category C felony. Subsection 4 defines mobile tracking devices. They include Apple AirTags, GPS trackers, basically anything you can use to track an individual without his or her knowledge or consent.

SERENA EVANS (Nevada Coalition to End Domestic and Sexual Violence):
When we were asked to become involved with A.B. 356, I immediately reached out to our direct service providers across the State to learn about the effects the bill would have on the victim survivors they serve.

I heard horrifying stories from the service providers. A system-based advocate shared that several years ago, she had a client whose case was not taken seriously because it seemed unlikely she and her minor children were being followed. Many times, the victim survivor discovered her perpetrator following her car, including out of the area and on nonroutine trips. Whenever the police were called, he disappeared. The victim survivor took the initiative to have her car searched for tracking devices. It took a diligent detective and specially

trained police department tech personnel to find the tracker. When the perpetrator was finally arrested, multiple trackers were found inside his vehicle. The advocate shared the significant trauma this terrorism caused the victim survivor and her children and how, unfortunately, she was not believed.

An executive director of our southern Nevada program told me a handful of victim survivors at her confidential shelter have been found by stalkers due to vehicle tracking devices. Another advocate told me an abusive partner came to the shelter and took the victim survivor's vehicle because he had an extra set of keys, despite the title and ownership of the vehicle being held by the victim survivor. Her job required traveling during the workday by car. The perpetrator deliberately inflicted fear, asserted power and control, and sabotaged the victim survivor's employment and financial stability.

These stories are just a few of many, but they are not uncommon abuses founded on creating power and control. Perpetrators of domestic violence and stalking are particularly strategic and cunning. We need bills like A.B. 356 to intervene with predatory abusers' ability to keep tabs on their victim survivors.

ASSEMBLYWOMAN LA RUE HATCH:
We discovered affixing trackers to vehicles is not illegal because of the couple of high-profile cases in Reno. However, the issue affects everyone. Certainly, my reaction when I heard Ms. Evans' stories was, "Wait, that's not a crime already?" Like most of us, I assumed it was illegal. Nevadans value their privacy highly. We want to make sure we are doing everything we can to preserve that.

ASSEMBLYWOMAN DICKMAN:
There are 27 states that have implemented this kind of protection. About a week ago, the Indiana Legislature passed a similar bill unanimously with 92 house members and 45 senators.

SENATOR HANSEN:
I am a cosponsor of A.B. 356. You brought up an interesting point I had not thought about, Ms. Evans. Let us say my wife is very beautiful and I am suspicious, as a man, that maybe she is running around on me. We co-own an automobile. Am I allowed to place a device on my own automobile to see where my wife is going, or would that be a violation of this law?

ASSEMBLYWOMAN DICKMAN:
As long as you own the car, you can place a device in it.

SENATOR HANSEN:
What if we were unmarried and just living together?

ASSEMBLYWOMAN DICKMAN:
As long as you are an owner of the vehicle, you could put your name on record as legally able to install a tracking device.

SENATOR HANSEN:
Have you seen the proposed amendment (Exhibit C) to A.B. 356 from the Washoe County Sheriff's Office? Do you consider it a friendly amendment?

ASSEMBLYWOMAN LA RUE HATCH:
We have seen it, but I do not know if it is friendly. The amendment was rejected in the Assembly.

SENATOR HANSEN:
The amendment's sponsors came to see me. Some of the things in it seem reasonable, but at the moment it is not considered friendly.

ASSEMBLYWOMAN DICKMAN:
It is not the same amendment, Exhibit C, rejected by the Assembly. To me, it is not unfriendly.

ASSEMBLYWOMAN LA RUE HATCH:
Let us clarify: we are still working on the amendment language with our partners. We will also take direction from the Committee.

SENATOR STONE:
It is critically important to respect privacy, but I have a couple of concerns about A.B. 356. Many of us are dealing with parents who are living longer than their parents did. My father had Alzheimer's disease, but he was still able to drive. Toward the end, he was getting more confused. I got a phone call from a law enforcement agency that officers had picked up my dad 60 miles away from his house. He was confused about where he was and where he was going.

How would the bill deal with a situation like that in which someone may want to keep track of an elderly parent with cognitive issues because of Alzheimer's disease? Many times, sufferers are a little defiant; when you try to take their driver's licenses away, they may go berserk on you. So, if I told my dad, "I would like to put a device on your car to keep track of where you are so I can make sure you are safe," but he says no, what do I do?

ASSEMBLYWOMAN DICKMAN:
In the original bill, I asked for an exemption for someone who was in charge of someone who had Alzheimer's or some sort of cognitive decline. Apparently, Legislative Counsel Bureau (LCB) did not add that provision to the revised bill. If that is something the Committee is interested in adding, we would certainly be open to it.

SENATOR STONE:
I would respectfully ask that you consider it. Again, people are living longer and dementia is an increasingly common problem. The responsibility usually falls on the adult kids to care for their parents. We all want to make sure our parents are safe and protected, so keeping track of where they are is important. An amendment that is narrow and specifically protects people who are basically custodial overseers of their parents' well-being could be considered an exception.

I have issues with the exigent circumstances we will discuss later when we hear from the bill's opposition. The bill will protect women, men and children in Nevada.

SENATOR KRASNER:
Yesterday, the *Reno Gazette-Journal* newspaper had a story regarding two local elected officials who had tracking devices placed unknowingly on their vehicles. The law on this varies from state to state. However, the U.S. Supreme Court has made it clear that law enforcement must have a warrant to place a tracking device on anybody's vehicle.

I ask you to uphold what the Court has ruled in regard to the Fourth Amendment privacy rights of citizens. The Founding Fathers put that amendment in the U.S. Constitution to protect all of us.

ASSEMBLYWOMAN LA RUE HATCH:
That is the exact discussion we had in the Assembly Committee on Judiciary and why we do not have an agreement on an amendment right now. We want to make sure we are not blowing up the Fourth Amendment with a bill that has otherwise good intentions or overrules the Court.

SENATOR OHRENSCHALL:
I, too, have read the newspaper stories out of northern Nevada and was shocked to learn it is not against the law for someone to do this. I like the bill as is. In the penalty section, section 1, subparagraph 3, is there a time limitation? We have other statutes providing a third offense is a felony after seven years. Would this be three offenses over the offender's whole life?

ASSEMBLYWOMAN LA RUE HATCH:
You are correct. There is no time limit. We discussed that in the Assembly Committee on Judiciary but felt if a person is tracking someone without his or her knowledge or consent, that is concerning behavior. There was no appetite in the Assembly to add a time limit.

SENATOR NGUYEN:
When we talk about how the bill does not apply to law enforcement officers who install, conceal or otherwise place mobile tracking devices in or on a motor vehicle pursuant to a warrant or court order, are there special circumstances? I am trying to envision a scenario where officers would put a tracking device on a vehicle without a court order or warrant. Did any of that come up during your conversations?

ASSEMBLYWOMAN DICKMAN:
Yes. Officers placing a tracking device without legal permission apparently does happen infrequently. Let us say someone is kidnapped and an officer sees the car but does not have time to get a court order before he or she could arrest the suspect. The officer puts the tracker on the car and then gets the court order.

SENATOR NGUYEN:
I was unaware our law enforcement officers carry tracking devices in their bag of tools.

ASSEMBLYWOMAN LA RUE HATCH:
We talked to LCB staff about this, and they said they could not find a single case in Nevada when that had occurred. They said most other states' laws specify a warrant or court order is needed before officers are able to do their jobs.

CHAIR SCHEIBLE:
I like the intent of the bill. When I was a prosecutor, I had a domestic violence case involving a tracker installed on a car. We were unable to charge that offense because there was no offense to charge. We were, however, able to charge the stalking offense because of other behavior by the person who placed the tracker but not for placing the tracker. That was quite disturbing to the victim.

It is important to recognize we are talking about vehicles, which have a lot of special properties. They are highly mobile and often in public places where everybody has access to them. With respect to differentiating between things like elderly parents and adult children and other people who may be in charge of someone's care, we have other legal tools to develop relationships with and keep tabs on them.

Those tools are simply absent when talking about somebody leaving his or her car in a parking lot at a place of work, worship or even in the driveway of his or her own home. Anybody walking by can install a tracking device, which are incredibly difficult to find. I will not call out any particular law enforcement agency, but I know of one that has lost a tracking device placed on a car. Officers could not find it when they went to retrieve it because devices are so small and difficult to detect.

All of that being said, I want to talk about the proposed amendment, Exhibit C. As a baseline, what is your understanding of the remedy for Fourth Amendment violations? When are someone's Fourth Amendment rights violated? What is the legal remedy for that person?

ASSEMBLYWOMAN LA RUE HATCH:
I am not a lawyer so am going to defer to the legal counsel to let us know what the remedies are.

ASSEMBLYWOMAN DICKMAN:
I am not a lawyer either. I really would not know how to answer that question.

CHAIR SCHEIBLE:
I will answer it for you. When someone's Fourth Amendment rights are violated, the legal remedy is to have the evidence suppressed. When we are talking about allowing law enforcement officers to install tracking devices on vehicles without a warrant, we must consider *United States v. Jones*, 565 U.S. 400,132 S. Ct. 945 (2012). I assume you have read it?

ASSEMBLYWOMAN LA RUE HATCH:
We did not read that in preparation for this hearing today.

CHAIR SCHEIBLE:
You are not accepting the law enforcement amendment, Exhibit C, but you have not read the Supreme Court case on this topic?

ASSEMBLYWOMAN LA RUE HATCH:
We were unprepared for today's amendment, Exhibit C, because we were told it would be presented in a separate hearing by law enforcement. I did not say it was unfriendly or we are rejecting it. I do not know all the details of a separate hearing on the amendment,

ASSEMBLYWOMAN DICKMAN:
Thank you, Chair, because I am open to the amendment, Exhibit C.

CHAIR SCHEIBLE:
I will simplify this in two ways. First, is it your intention to protect a law enforcement officer in the course of his or her duties who installs a tracking device he or she believes is legally authorized and it turns out it is not?

Legally, there are a lot of ways we can learn something is unauthorized. It could be a warrant is not upheld in court or evidence is suppressed for other reasons. It could be it was a violation of policy that is only later discovered. It could be it was an unlawful use of a tracking device because the vehicle was not owned by the person whom officers thought it was owned by. It could be a defect in the warrant. It could be any number of things.

Let us say a police detective, believing he or she has the authorization to install a tracking device and acting in an official capacity, later learns he or she did not have permission. Do you intend for them to be held liable for a crime?

ASSEMBLYWOMAN DICKMAN:
Absolutely not.

ASSEMBLYWOMAN LA RUE HATCH:
I do not want officers to be held liable for a crime, but I agree with Senator Krasner we want to make sure we are in line with the Supreme Court. I want to make sure we are defending the Fourth Amendment; we must be careful with the bill's language to do so.

CHAIR SCHEIBLE:
That sounds like a good baseline from which we can all work.

SENATOR HARRIS:
I have a question similar to that of the Chair but will make it more narrow. Is it your intention if a police officer has probable cause a crime has been committed and puts a tracker on a car without a warrant or court order that he or she be held liable under A.B. 356?

ASSEMBLYWOMAN LA RUE HATCH:
It is our intention that law enforcement continues to have the same rights installing GPS trackers as they currently do. We are trying to narrow the language to maintain the standards on officers placing tracking devices,

ASSEMBLYWOMAN DICKMAN:
Yes, I agree with my colleague. The bill has nothing to do with trying to change anything police officers do now; that would not be our intention in any way. With probable cause, I would hope they would still be able to install trackers without authorization.

SENATOR HARRIS:
When a tracking device is improperly installed by a police officer, that is generally part of a long and robust list of caselaw. Traditionally, as the Chair mentioned, the remedy is to exclude the evidence so as not to charge the police officer with a crime.

As A.B. 356 is currently drafted, if an officer has probable cause a crime has been committed and puts a tracker on a vehicle, he or she would not be guilty of a crime under section 1, subsection 2. If that is not the intention, some type of tweak needs to be made.

ASSEMBLYWOMAN LA RUE HATCH:
You summed up our intentions: in the normal course of events, suppression of evidence all stays the same. We are not trying to create a new crime law enforcement officers would be subject to.

ASSEMBLYWOMAN DICKMAN:
The bill has absolutely nothing to do with law enforcement. We wanted to exclude law enforcement from any of its consequences.

SENATOR HARRIS:
We may need to ensure the current legal structure remains in place. The best and straightest line to do that would likely be to exclude law enforcers or police officers who are on duty acting in the commission of their job.

If you are a law enforcement officer stalking your girlfriend with a tracker, the bill should apply to you as a regular citizen. If you are doing your job as an officer and run afoul of this law, we have remedies in place through the court system. We may want to look at peeling this back a little to ensure officers are not caught up in not following the Fourth Amendment perfectly. That should not be a crime.

SENATOR HANSEN:
We are way off in the weeds on this. As a cosponsor of A.B. 356, I agree with you, Senator Harris. The amendment, Exhibit C, will probably get a more fair hearing because obviously none of us want to go after guys who have reasonable levels of probable cause.

With any crime, criminal intent must be established before prosecution can occur. So before one of these guys could be prosecuted for unintentionally violating the law, prosecutors would have to prove he or she knowingly broke the law. They are pretty much covered already, but I can see where my colleagues are going with this.

We need to define when there is reasonable cause for officers to use tracking devices. When all the steps the Chair brought up come into play, we need to ensure there is no possible way for somebody to go after an officer in the absence of criminal intent. That was the sponsors' intent from the get-go.

When we discuss the amendment, Exhibit C, we must all have the same understanding. Our goal is not to come up with reasons to criminalize police behavior done with good intent when officers had probable cause or were waiting for warrant approval to follow a suspect who may have kidnapped somebody, et cetera. There is no way they would face criminal prosecution in the absence of an example like the Chair gave. If they install a tracking device to follow a girlfriend, then normal police protections go away. Officers do have criminal intent in that case and could be prosecuted even if they are officers.

ASSEMBLYWOMAN DICKMAN:
I wish I could have said it that way.

SENATOR STONE:
Can you opine on existing law? Is NRS silent on exigent abilities for law enforcement to put devices on cars they allegedly feel are timely and important if they cannot wait for a search warrant?

KARLY O'KRENT (COUNSEL):
Under existing law and the Nevada Constitution, the status quo in attaching a GPS tracker to a vehicle is a search. With regard to whether a warrant would be required, that is governed by existing Fourth Amendment caselaw. It would be specific to particular circumstances.

JASON WALKER (Washoe County Sheriff's Office):
I am here to discuss our still-friendly amendment, Exhibit C. Having worked at the Washoe County Sheriff's Office for 17 years, I have an operational knowledge of Fourth Amendment search-and-seizure protections.

We wholeheartedly support criminalizing the use of trackers without consent by private citizens. Our concern lies with section 1, subsection 2 of A.B. 356, which provides an exemption for law enforcement pursuant to a warrant or court order. We understand the purpose of the bill is to prohibit the use of trackers by private parties while not altering the ability of law enforcement to

use trackers pursuant to present law. However, the Supreme Court has several recognized exceptions to warrant requirements regarding exigent circumstances.

In throwing out worst-case scenarios among the coalition working on the bill, the worst one we came up with is a 12-year-old girl kidnapped outside her middle school by a stranger. The kidnapping is caught on surveillance and the perpetrator is identified as having a gold Toyota with a discernable license plate.

I digress to note undercover officers have tracking units as part of their kit. They chase the worst of the worst suspects out there. Standard uniform police officers do not carry tracking devices.

The following day, an undercover officer observes the vehicle with the same license plate at a gas station. He goes inside, observes the perpetrator in line to buy a box of super-crunchy Gardetto's and a box of condoms. The girl is nowhere to be seen. The officer runs to his car, obtains a tracker and slips it onto the perpetrator's vehicle. The officer is rightly more concerned about finding the girl than immediately arresting the perpetrator. The suspect exits the store moments later and drives to a cabin in the woods. Police follow him using the tracker, save the girl and arrest the perpetrator.

If A.B. 356 were to pass as written, that officer would be committing a crime by placing the tracker on the vehicle without a court order. Applications for search warrants are now often made telephonically. Even given that option, there are exigent circumstances such as the above hypothetical. It may never happen, but it would be the worst thing we can think of. The officer would not have the 10, 15 or 30 minutes it takes to obtain a telephonic search warrant. The Supreme Court even allows police to enter a home—a person's most private place—without a warrant under exigent circumstances.

The amendment, Exhibit C, would add the language of probable cause; it changes nothing else in NRS. We want that status quo to be there. Section 1, subsection 2 of the amendment, Exhibit C, adds the language "peace officer" as opposed to "law enforcement":

> The provisions of subsection 1 do not apply to a peace officer who installs, conceals or otherwise places a mobile tracking device in or on a motor vehicle of a person who the police officer has probable

cause to believe is committing or has committed a crime, or pursuant to a warrant or court order.

JENNIFER NOBLE (Nevada District Attorneys Association):
When I first saw this bill, I did not expect the discussion to become such an intense analysis of Fourth Amendment rights. I am glad we are having this conversation because it is important for everybody to understand how this works.

The Fourth Amendment provides protection against unlawful searches. Court-created doctrines have created narrow exceptions to the Amendment. I want to make clear nothing in the bill's proposed amendment and none of our discussions have ever indicated anything other than a desire to keep the constitutional rights of Nevadans unchanged: any search must be supported by probable cause and a warrant unless it falls within one of the narrow exceptions to the warrant requirement as outlined by the Court.

The Nevada District Attorneys Association strongly supports the policy to ensure people are not tracked without their knowledge and consent because to do otherwise is an invasion of privacy. No one should have to tolerate that. The Court made that clear with *United States v. Jones*, referenced by the Chair. It found the placement of a tracker is a search for purposes of the Fourth Amendment. We are not trying to say it is not a search. We could say that all day long, and that would not alter the law that would violate Supreme Court precedent. Our purpose is not to narrow or expand constitutional rights. It is for them to remain the same.

Tracker placement requires a warrant. Absent narrow exceptions to the warrant requirement, it requires exigency or emergencies. To be clear, it is judges—not district attorneys nor law enforcement—who ultimately decide whether exigency or another exception to the warrant requirement applies to a situation. It would be no different if law enforcement miscalculates in its assessment of exigency.

The exclusionary rule would apply and any evidence emanating from that invalid search would be suppressed in court. That is the remedy. It should not be a criminal remedy because sometimes law enforcement might apply for a warrant, the court grants it and then a higher court says, "No, we do not think you should have granted that warrant." There is an exception called the good-faith

exception. We must have an ability to make room for constitutional law in this. At the same time, let us protect Nevadans and make sure they are not harassed or stalked with illegally placed trackers.

This is important policy. We are hopeful A.B. 356 can go forward informed by a necessary acknowledgment of our State and U.S. Constitutions. Nevadans deserve no less, and private individuals deserve to be free from this type of harassment.

A September 2022 article from the National Conference of State Legislatures indicates most of the laws similar to A.B. 356 provide for an exception for lawful use of trackers by law enforcement. Texas law says the exception in our section 1, subsection 2 does not apply to a peace officer who installs the device in the course of a criminal investigation or pursuant to a court order. Utah law says the section does not apply to a peace officer acting in his or her official capacity who installs a tracking device on a motor vehicle in the course of a criminal investigation. We are not asking for something unique.

The mere fact that we cannot give you an example of a state in which this was passed and then somehow something horrible happened is because these laws only recently passed and dire situations do not often happen. That is why there are exceptions. The type of discussion about our Constitution in this Committee is important. Unfortunately, it was denied to us by the leadership of the Assembly Committee on Judiciary.

SENATOR HARRIS:
Why not have the officer simply follow the car?

MR. WALKER:
My honest answer is the officer might be seen because he or she would be too close. It is too late at that point to spook the suspect. A tracker tells you where he or she is going. The best and safest thing is to not push an incident but maintain it as it goes.

SENATOR HARRIS:
In your scenario, we are talking about an undercover officer in an unmarked car, right? In the scenario, it seems there are other tools that might be available to law enforcement, especially given your public movements are not protected. Following someone is not a search. In the end, the safer thing would be to not

infringe on someone's rights but simply follow the suspect to where he or she might be apprehended.

MR. WALKER:
I do not disagree with you, Senator. That is a great point.

CHAIR SCHEIBLE:
Would you want that officer to be criminally liable for making the judgment call to put on the tracker instead of following the car?

MR. WALKER:
Absolutely not.

CHAIR SCHEIBLE:
That is where I was going next. In Mr. Walker's scenario, under the current law, the officer has probable cause that a crime has been committed. If you have the license plate number and a description of the suspect, you have probable cause this is him. Would a search be allowed?

MS. NOBLE:
Yes, under the current language of A.B. 356, a search would be allowed under NRS.

SENATOR HARRIS:
If an officer had an exigent circumstance, he or she could make a search by placing a tracker. But if the officer were wrong, any information gained from the search is going to be suppressed. However, he or she will not be criminally charged. If we do not accept the amendment, Exhibit C, the law would be not only that the evidence potentially would be suppressed, but the officer could be subject to criminal penalties.

MS. NOBLE:
Yes.

SENATOR OHRENSCHALL:
In your experience as an officer in the field, when you sought a telephonic search warrant to put a GPS tracker on a car, was it denied often? Have you had instances when you had to bypass seeking the telephonic search warrant and tried to install the tracker before you got the warrant?

MR. WALKER:
My applications for a warrant to place a tracker have not been turned down. That extreme instance has not come up, but I do not want to lack the ability to do it.

SENATOR NGUYEN:
I am always at a loss for words when we hear outrageous scenarios used as potential examples. I am having flashbacks to when I initially brought forward A.B. No. 116 of the 81st Session regarding decriminalizing certain traffic violations. We heard scenarios about law enforcement officers not being able to stop people because there were severed heads on the seat next to the driver.

I do not necessarily agree we should make policy decisions based on wild, crazy hypotheticals. I am concerned about police protections we are seeking to expand. Are there any other examples you might give that are less sensationalistic?

MS. NOBLE:
Senator Nguyen, your point is well taken. Examples such as that of Mr. Walker always sound outrageous until something similar happens to your family. Officers may need to find your kidnapped kid or somebody else quickly without a warrant. I cannot give you another precise example; I do not know if one will ever happen.

The intention of A.B. 356 is to narrow or exceed the scope of current constitutional protections for Nevadans. I do not see any reason to do so. We can easily keep the current law without holding police officers criminally liable for doing their best to assess an exception to the warrant requirement. If they do not, the courts will deal with it by excluding evidence.

BETH SCHMIDT (Las Vegas Metropolitan Police Department):
Senator Harris and Senator Nguyen, the Las Vegas Metropolitan Police Department (LVMPD) has a major violators unit. We go after the worst of the worst bad people—Mr. Walker's scenario is not a hypothetical.

One of the reasons we put trackers on vehicles—and it is the exception when we do so—is when we have a guy we know has committed a heinous crime, we do not want to try to apprehend him near a school, in a supermarket or at a

7-Eleven. The reason our major-violators unit does that is to protect public safety. Could we instead initiate a vehicle pursuit? Yes.

Senator Harris, my offer to you has always been to do a ride along.

SENATOR HARRIS:
Yes, I have done a ride along.

MS. SCHMIDT:
I want you to come with me and do some surveillance and see how we train for it. It is extremely difficult to follow people. I did it for three years in unmarked cars when I worked in financial crimes. In Mr. Walker's scenario in which someone has kidnapped a child, that person is looking over his or her shoulder. Trust me, it is extremely hard to follow someone, despite training for it repeatedly in our various units.

When the perpetrator is an excessively violent person, we make an exception to the rule. We will put a tracker on the vehicle if we have the opportunity because it gives us a chance to monitor where he or she is going. We then try to apprehend the person safely to protect society.

It is not like on TV whereby officers follow a car and get into a hot pursuit. We are able to use other resources to de-escalate the situation. We can get our air pursuit unit to follow the car. Our major-violators unit is patient and will get the suspect to a place where it is now safe and he or she is contained. We surround the car and call in crisis negotiators. That is why we so desperately need to maintain what we already have. As written, A.B. 356 changes the law more substantially than it appears on the surface.

SENATOR NGUYEN:
Now, I am down a wormhole. It sounds like you are saying LVMPD is tracking people without warrants and exigent circumstances when they are repeat offenders. Is that correct?

MS. SCHMIDT:
No, the unit in charge of trying to find the worst of the worst is the major violators unit. If its officers are trying to locate the person in the vehicle, it is because of a crime. If we have an opportunity to put a tracker on the car to safely take the suspect into custody, that is the intent of what I was saying. We

are not running around putting trackers on cars willy-nilly. I am describing a controlled situation which we are trying to handle as safely as possible. Under those circumstances, does that answer your question?

SENATOR NGUYEN:
This is when you have a known suspect, correct?

MS. SCHMIDT:
That is correct.

SENATOR NGUYEN:
Would you not have already obtained a warrant to track that person because you already suspect he or she is the perpetrator of the crime? That is not what is suggested in the amendment, Exhibit C. If you knew the suspect has committed a crime, you probably would have gotten a warrant.

MS. NOBLE:
I understand what you are saying. I know you are a practitioner in this area of law so you know when officers apply for a warrant it must be for sufficient evidential circumstances. If they do not know what the suspect's vehicle is or what he or she is wearing, officers cannot articulate exactly why they want to put a tracker on a car—which may be stolen. Thus, they cannot get a warrant ahead of time.

The amendment, Exhibit C, pertains to a narrow exception. I would say what Ms. Schmidt described fits exigency, but, of course, that is for a court to determine. The bottom line is if officers do not have enough information to put in a warrant application, they cannot do it ahead of time.

SENATOR OHRENSCHALL:
Ms. Schmidt, thank you for describing your real-world experiences with LVMPD. Have you, as an officer, had an application denied for a telephonic search warrant using a GPS tracker? Have you had a case in which you had to bypass the warrant and put the tracker on a vehicle before you applied for the telephonic search warrant?

MS. SCHMIDT:
I have not put trackers on a vehicle; a specialized LVMPD unit does that. I spoke with our major violators unit sergeant, and I was not made aware of any warrants that were denied. That is because of the specificity of the warrants.

SENATOR OHRENSCHALL:
Are you aware of instances in which officers had to put trackers on right away and bypass the request for a telephonic search warrant?

MS. SCHMIDT:
Yes, that happens. Once the tracker is placed, officers immediately start the paperwork for the telephonic warrant. Telephonic warrants may take a long time to obtain; it involves getting a judge on the phone.

SENATOR HANSEN:
Rural law enforcers do not necessarily have immediate access to a judge to get a search warrant. They probably need some level of protection for probable cause.

After hearing today's comments, what we sponsors want is simply to give some level of probable-cause protection to the police, short of a full-out warrant or court order in section 1, subsection 2 of A.B. 356.

If the bill is passed as is, if I were a sharp defense attorney, I would challenge the admittance of the evidence based on questionable probable cause. The law requires you to have a warrant or court order to place a tracker. Therefore, the evidence should be suppressed by the court. Even if you found the individual was a kidnapper, you failed to follow Nevada law; therefore, the evidence would be suppressed.

As a defense attorney, I would ask the court if there was a clear violation of the constitutional or NRS protections my client rightfully has. I would say, "You guys have broken the law by failing to get a court order or a warrant. Therefore, all the evidence in this kidnapping case should be suppressed, your honor." Yes or no?

MS. NOBLE:
The short answer is yes. If I were a defense attorney, I would try to do that. I might be right because, to some extent, we cannot legislate away the

Supreme Court's requirement to have a warrant when we place a tracker on a vehicle. There are exceptions that should be built into this like they are built into everything else. Certainly, given our statutes, we cannot merely require probable cause and no exigency. We must have both, or the evidence should be rightfully suppressed.

SENATOR HANSEN:
That is kind of what I am getting at. Under current law, officers have a probable-cause exception. If the bill passes without the amendment, Exhibit C, that could be challenged in court. Therefore, the amendment seems friendly to a guy who is a co-sponsor of the bill.

As testifiers pointed out, there are a lot of nasty cases that are extreme examples of human behavior in which officers may need the protection of a probable-cause provision under Nevada law. Otherwise, some really sharp attorney may say, "Sorry, you did not follow the law. You did not have probable cause. Therefore, this evidence should be suppressed, your honor." However, the law does not specify probable cause; it says you have to have a search warrant or court order.

SENATOR STONE:
Ms. Noble, you said there are constitutionally tested, narrow exceptions documented in caselaw. We are talking about unintended consequences of A.B. 356, right? We all agree we want to protect the privacy of Nevada citizens.

Ms. Schmidt, do you often use exigent circumstances to go after a criminal, end up in court and the judge says the exigencies are valid to suppress evidence? Is that a common problem in Clark County?

MS. SCHMIDT:
No.

SENATOR STONE:
I would imagine that is a rare situation but it could be a lifesaving one. How often do LVMPD officers need to get telephonic warrants? What is the average amount of time needed to contact the judge, give the details and then get the warrant? Are we talking about 30 minutes, an hour, 5 hours?

MS. SCHMIDT:
Across the LVMPD investigative division, we obtain telephonic warrants all the time multiple times daily. Assuming a judge is available, warrants are obtained within 24 hours. If the judge is in the courtroom, we have to wait. The best-case scenario is 30 minutes because the request must first be read and approved by a second officer and then the supervisor has to approve it. Then we have to talk to the district attorney and finally call the judge. That is assuming the officer is experienced and knows what he or she is doing. Officers must be organized and have all the facts to put enough detail in the warrant.

SENATOR STONE:
That would be the best scenario, but probably not the average. I would imagine it takes longer. There are situations so acute if you do not intervene quickly, it could mean loss of life, murder, rape, whatever. There is no question the bill needs to be amended in some way. I definitely do not want to see police officers in jail for exerting their right, if you will, to appropriately apprehend criminals in the operation of their work.

Ms. Noble made it clear, in contrast to what we have heard from others, A.B. 356 is specifically written to honor the Fourth Amendment without exceptions. However, we know there are exceptions, and not only have they worked, they work without any problems in Clark County, the largest county in Nevada.

CHAIR SCHEIBLE:
Are you aware of another statute that requires a warrant for law enforcement to act, as opposed to requiring probable cause?

MS. NOBLE:
No.

MS. SCHMIDT:
No.

MR. WALKER:
No.

CHAIR SCHEIBLE:
In the amendment, Exhibit C, if an officer has probable cause to believe a person is committing or has committed a crime, is that also the standard for obtaining a warrant?

MS. NOBLE:
Yes, that is correct.

CHAIR SCHEIBLE:
The bill's provisions are circular: in order for people to avail themselves of the probable-cause section of the amendment, Exhibit C, and be allowed to install trackers without a warrant, all the circumstances would have to be there to allow them to get the warrant.

The entire conversation we have had about constitutional law and the robust caselaw on this is to explain that fine difference between having a warrant versus having all of the attendant circumstances of a warrant, which is important for law enforcement officers to be able to do their job. Am I summarizing that correctly?

MS. SCHMIDT:
You are. We are talking about exigent circumstances, not everyday occurrences.

MR. WALKER:
I agree with your summary, Chair.

CHAIR SCHEIBLE:
I want to further clarify when we say the police officer has probable cause to believe a person is committing or has committed a crime, that is not new language invented by you and inserted into this amendment. That is the constitutional standard for a warrant, correct?

MS. NOBLE:
That is correct.

MS. SCHMIDT:
That is correct.

JASON WALKER:
That is correct.

SENATOR HARRIS:
We have had quite a bit of discussion about the Fourth Amendment and when a search is or is not allowed. We might want to level set here, regardless of whether we understand the standards and all the caselaw behind it.

CHAIR SCHEIBLE:
The question in front of us is should an officer be liable for crime if he or she does not meet that standard for any given reason? To me, understanding the intricacies is almost secondary to the issues we are discussing in this bill. Regardless of what the Fourth Amendment standards are, are we not discussing whether has an officer committed a crime by not meeting those standards?

A majority of this Committee and the bill sponsors agree that should be the case. I want to make sure even though we have got our heads all scrambled up about *United States v. Jones* and probable cause. All that is out in the weeds. The Committee needs to decide will officers be criminally liable for violating that standard, correct?

SENATOR HARRIS:
You said it better than I could. I do not know if Committee members want to respond to that; it seems more like a comment.

SUSAN PROFFITT (Vice President, Nevada Republican Club):
Assembly Bill 356 is a lovely bill. I am happy when I see people working across the aisle, getting along and doing something good for the community.

JULIE HEREFORD (Nevadans Citizen Action Network):
Nevadans Citizen Action Network supports A.B. 356. We thank all of you for helping make our State better again.

MELISSA CLEMENT (Nevada Right to Life):
Nevada Right to Life supports A.B. 356.

MS. NOBLE:
It is clear the Nevada District Attorneys Association thinks an amendment or something like it is a good idea. I want to make sure what is not lost in the

sauce is the sponsors of this bill had a great idea: protect Nevadans from people putting trackers on others' cars and invading their privacy. The only time that expectation of privacy should be invaded is when officers have a warrant or an exception to the warrant requirement. Those instances are rare.

The extent we have had to hash things out today is not due to the sponsors. It is probably due to a lack of discussion and vetting in the Assembly.

NICOLE ROURKE (City of Henderson; Henderson Police Department):
I would like to echo the supportive comments of my colleagues. The bill is good policy that protects Nevadans' privacy while maintaining what our officers need to do their jobs.

PAMELA DELPORTO (Nevada Sheriffs' and Chiefs' Association):
The Nevada Sheriffs' and Chiefs' Association appreciates the policy behind A.B. 356 yet supports the bill only as amended, Exhibit C.

MS. SCHMIDT:
The LVMPD strongly supports the policy of this bill: to prohibit tracking people with a mobile tracking device without their knowledge and consent. We are in strong support of the amendment.

As I discussed, we are neither looking to narrow nor expand constitutional rights in A.B. 356. I want to thank the Chair and Vice Chair for giving us context by articulating *United States v. Jones*, the Fourth Amendment and search-and-seizure protections. These are all key elements of how we practice as law enforcement officers. Those concepts are studied in the police academy, we take exams on them and we apply them on a daily basis. That is what gives us our authority.

I appreciate the bill's sponsors saying they want to continue to allow law enforcement to exercise their occupational rights. They intend for us to be able to continue to do our jobs as dictated by the U.S. Supreme Court.

MR. WALKER:
The Washoe County Sheriff's Office supports an amended A.B. 356.

ERICA ROTH (Washoe County Public Defender's Office):
The Washoe County Public Defender's Office specifically opposes the amendment, Exhibit C, to A.B. 356. If the concern we are discussing is privacy, the amendment violates the very basis of that claim, the Fourth Amendment. I want to break down where the real issue lies. The Fourth Amendment protects every one of us from unreasonable search and seizure by the government. It is the bedrock of our privacy rights in this Country. The amendment goes beyond the enumerated exception to the warrant requirement. It will allow a search without a warrant, not when someone is in danger and needs to be saved but in any and all circumstances in which a crime may have been supported by probable cause.

That is contrary to Supreme Court caselaw and the basic tenets of the Fourth Amendment. The Amendment is not absolute; there are enumerated exceptions to the warrant requirement. For example, a law enforcement officer does not need a warrant for some circumstances. In a search incident to arrest, once someone has been arrested, an officer is allowed to search the person and their belongings within their wingspan—any items in plain view.

In Senator Nguyen's unlikely scenario in which a law enforcement officer sees a severed head in the passenger seat of a vehicle, officers do not need a warrant to search it. Most important in this scenario is the exigent circumstances, otherwise known as "hot pursuit": when a law enforcement officer needs to pay immediate attention such as preventing destruction of evidence or the escape of a fleeing felon.

Here is a common law school hypothetical: John Piro is super hungry and sees Senator Nguyen eating cookies. He grabs the cookies forcefully out of her hands, committing a robbery. But thankfully, Mr. Walker has seen the whole thing and starts chasing Mr. Piro as he is eating all the cookies. He is able to enter Mr. Piro's home to stop him from destroying that property. This is the type of scenario we are talking about here.

The facts in *United States v. Jones* differ from the circumstances Mr. Walker raised. Specifically, in *United States v. Jones* there were no exigent circumstances or a hot pursuit. The defendant was suspected of being part of a complex drug-trafficking operation. There was evidence supporting a warrant, which was sought and granted to track the defendant for ten days. The issue arose when the officers continued tracking the individual after the time limit in

the warrant had expired. Importantly, the Supreme Court found there was no exception to the warrant requirement because there was no hot pursuit or exigency to prevent any other crimes from being committed.

I want to propose a more likely hypothetical scenario that could take place if this amendment, Exhibit C, is adopted. Let us say police suspect you of hunting without a license and an officer now has probable cause to believe you are doing so. Without judicial review, the officer can put a tracking device on your vehicle and track you to your home, school, church and family members' homes, where the government is going to have access to your most personal relationships and life.

There must absolutely be judicial review in the scenario provided by Mr. Walker. There is nothing in the original bill to preclude an officer in that exigent circumstance from placing a tracking device on the kidnapper's car and tracking the suspect. However, if the amendment is adopted, an officer will be able to track each of us without judicial review and when another crime is committed or a life is not in danger.

In *United States v. Jones*, the Court recognized how unbelievably personal information can be gleaned from a tracking device. When we are talking about that most personal information, there must be judicial review. The original bill will not preclude the scenario Mr. Walker described. No one has been able to point to a circumstance in which this has actually happened. But if a person kidnaps a 12-year-old girl, there is probable cause and an exigent circumstance to put a tracker on that vehicle. I urge the Committee to pass that the bill as originally drafted. This amendment is incredibly dangerous.

JOHN J. PIRO (Clark County Public Defender's Office):
Not only am I the Clark County public defender, I was also the president of Nevada Attorneys for Criminal Justice, which represents all the criminal attorneys across the State who are worth their salt.

The world is vexatious enough. I do not have time for the hypotheticals proposed by proponents of the amendment, Exhibit C, because the only part of A.B. 356 I oppose is the amendment. No one is trying to criminalize police officers; the bill's sponsors have specifically said they are not. We should just limit the bill to protecting private persons and leave the Fourth Amendment where it stands.

However, as Ms. Roth said, the amendment significantly weakens the Fourth Amendment protections. I do not think that was Mr. Walker nor Ms. Noble's intent.

United States v. Jones lays out a few things. One, a car is an effect, which makes it subject to the Fourth Amendment, and placing a GPS tracker on a vehicle is a search. When the government obtains information by physically intruding on our constitutionally protected areas, a search occurs. A search and seizure without a warrant is clearly unreasonable. Why is that in effect? It is to protect all of us, not just criminals, not just perpetrators in the wild hypotheticals we have heard thrown out.

The proponents of the amendment could not cite a single real-life case in which they applied a tracker with exigent circumstances and the evidence was suppressed or a case dismissed. Why? Because it does not exist. I do not know a single judge who would ever suppress evidence of an officer putting a tracker on a car when a 12-year-old girl is missing. I just do not think that is a valid scenario.

When we talk about the Constitution, we do not need these hypothetical boogeymen to ameliorate our protections as if the Constitution is a mere technicality. It is not a technicality; it is so frustrating when we treat it as such.

The bill says, get a warrant. That is the right way to go about things. Supreme Court caselaw says you can do a search without a warrant if there are exigent circumstances. Any other wild hypothetical scenario will likely be exigent circumstances.

I wholeheartedly ask the Committee to not accept the amendment. Quit letting a perfect piece of legislation that we cannot craft to address all constitutional situations become the enemy of the good piece of legislation that it is.

Police officers are granted a good-faith exception that none of us citizens get. Officers are trained in the law. When they screw up on the law, the court says it is okay, "You did it in good faith." But not us, the average citizens. We are not trained in the law. Few regular citizens watch these Committee hearings. When we make a mistake in the law, we do not get the good-faith exception; we are criminalized. Police have enough tools in their tool belt without ameliorating the Fourth Amendment with the proposed amendment, Exhibit C.

CHAIR SCHEIBLE:
I want to clarify what I think I heard you say: you would support an amendment containing language something like, "This does not apply to peace officers who install a mobile tracking device in the course of their lawful duties."

MR. PIRO:
I think the lawful duties create an exception not in our caselaw. Simply eliminating section 1, subsection 2 of A.B. 356 altogether, taking the police officers out of the bill altogether and putting private persons in section 1, remedies the situation we are trying to address. We need to get out of all this deep Fourth Amendment territory, in which were trying to ruin Article 1, section 18 of the Nevada Constitution:

> [t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause.

CHAIR SCHEIBLE:
If we put private citizens in section 1 and remove subsection 2, would that not open the door for anybody who is not a—quote—private citizen to install trackers anywhere he or she wants to? Who is not a private citizen aside from law enforcement? That is part of my question. Could an officer put a tracker on his girlfriend's car if we are not limiting them to the course of their lawful duties?

MR. PIRO:
Officers would be private citizens any time they are off work. I do not think they should get law enforcement protections off duty unless they are acting in the course and scope of their duties.

CHAIR SCHEIBLE:
You said, "acting in the course and scope of their duties." So, is that okay?

MR. PIRO:
No.

SENATOR HANSEN:
Mr. Piro, if we took out section 1, subsection 2, would you be okay with the bill? Two Washoe County public figures, a mayor and a county commissioner, recently had tracking devices placed on their vehicles. Yet here we are going back over the Fourth Amendment and *Jones versus Whatever*. Is *United States v. Jones* the case that dealt with the stingray technology issue?

MR. PIRO:
No, it did not, Senator; it dealt with a GPS tracking device applied to a person's automobile.

SENATOR HANSEN:
So, it is specific to A.B. 356. The bottom line is, we are on the same page. We do not want private citizens placing trackers. We certainly do not want cops being granted an exception or potentially being prosecuted. We do not want evidence being thrown out because they did not follow this new section of NRS.

I am curious as to whether you would be willing to work with law enforcement and the bill sponsors to come up with an amendment we can all live with. We are all pretty much on the same page as far as the intent: we do not want law enforcement to be allowed to basically violate Fourth Amendment protections. Are you suggesting NRS already protects law enforcement and they are corralled into the relatively narrow window of exception allowed by the Fourth Amendment?

MR. PIRO:
Senator, the issues are twofold. As lawyers do, I disagree with the proponents of the amendment, Exhibit C, that the original bill is going to somehow put a heightened Fourth Amendment requirement on officers to do their duty because exigency applies throughout Nevada caselaw. Trying to legislate what exigency is probably not the best idea. Courts need to look at it on a case-by-case basis.

SENATOR HANSEN:
Did you say if we eliminated the law enforcement provisions of the bill you would be okay with it?

MR. PIRO:
Yes, because that would leave us in the current legal state and prevents the situation that happened to Reno Mayor Hillary Schieve and other people. That is all any of us want to do.

SENATOR HANSEN:
Okay, we have been down this rabbit hole for a while now.

SENATOR HARRIS:
Mr. Piro, even you are conflating Fourth Amendment law with a new crime, correct? Assembly Bill 356 is about when a new crime will apply. I know what your answer is going to be, but I have to ask: when an officer violates the Fourth Amendment, should he or she be held criminally liable?

MR. PIRO:
No, our current state of law does not apply. The bill does not do that. I know we are all reading it kind of differently, Senator, but I simply do not read it that way. None of the 17 district attorneys in Nevada would read the bill that way and charge an officer. We should work on when officers violate people's rights because the punishments in section 1, subsection 3 are weak.

SENATOR HARRIS:
It seems your argument is the bill expands Fourth Amendment protections but does not address what is allowed or disallowed under the Amendment. It just speaks to when someone has committed the crime of unlawful installation. That is the genesis for the Amendment right there: to ensure if an officer violates the Fourth Amendment—intentionally or unintentionally—the courts are able to handle it since the officer has not committed the crime outlined in this bill.

MR. PIRO:
I do not read the bill as creating a crime. Nor do I read it as expanding Fourth Amendment protections, as do the proponents of the amendment, Exhibit C. I read it as keeping everything static.

SENATOR HARRIS:
What the Chair was trying to get at is nailing down what type of amendment you would be onboard with, Mr. Piro. Because surprisingly enough, the district attorneys here have agreed with you today more than they probably

have all Session. If it were clear somehow that the bill applies to peace officers when they are not on duty, would you be okay with that?

MR. PIRO:
Of course. I would have to see the language, but I still disagree with the amendment's proponents. The bill is not going to really affect the way officers practice. Those are the disagreements we have had.

SENATOR HARRIS:
One thing I think is a great solution is the Utah law. It says the law does not apply to a peace officer acting in his or her official capacity who installs a tracking device on a motor vehicle in the course of a criminal investigation or pursuant to a court order. Would that accomplish the goals of the amendment's proponents and ameliorate your concerns?

MR. PIRO:
I would be concerned it would weaken the *United States v. Jones* ruling, which says officers must get a warrant.

SENATOR HARRIS:
Why do you feel that way, given this bill is about committing the crime of unlawful search not about when a search is allowed?

MR. PIRO:
Section 1, subsection 2 muddies the waters a bit. It is putting us in this Fourth Amendment conundrum.

SENATOR HARRIS:
If we delete subsection 2, are you good with that?

MR. PIRO:
Yes—you nailed it.

SENATOR NGUYEN:
I just want to clarify: if an officer wants to track someone, can he or she do so under current law without a warrant? Can officers track vehicles under the exigent circumstances described in Mr. Walker's kidnapping hypothetical?

MS. SCHMIDT:
Yes.

SENATOR NGUYEN:
If the bill only applied to private individuals and we removed section 1, subsection 2, would you still be able to do what you are doing? We need to resolve the Fourth Amendment issue the opposition has with the amendment, Exhibit C.

MS. SCHMIDT:
Yes, and we would support that.

CHAIR SCHEIBLE:
My question for the legal counsel is if we remove section 1, subsection 2 from the bill, would peace officers still be able to use tracking devices without being guilty of a misdemeanor crime?

MS. O'KRENT:
Yes.

CHAIR SCHEIBLE:
Sponsors, what are your thoughts on removing section 1, subsection 2?

ASSEMBLYWOMAN DICKMAN:
The reason I asked for law enforcement exemptions in the original bill was I thought we needed to specifically exclude people we did not want to be affected by the new law. I am fine with removing section 1, subsection 2 if that is a good solution for everyone. All we want is for A.B. 356 to pass without harming police officers or anyone else.

ASSEMBLYWOMAN LA RUE HATCH:
I appreciate the Committee trying to get at the best policy on controlling tracker use. Through all of that, we have agreed on our ultimate goal: protect individuals' privacy and protect people from becoming victims of stalking and abuse by being spied upon. The bill is not about blowing up the Fourth Amendment or criminalizing people for doing their jobs.

CHAIR SCHEIBLE:
This has been one of our most robust hearings in the Senate Committee on Judiciary this Session. We have received two documents (Exhibit D) in support of A.B. 356. I will close the hearing on A.B. 356 and open the work session.

PATRICK GUINAN (Policy Analyst):
We have two bills to be voted on as a consent calendar, A.B. 354 and A.B. 355, in their respective work session documents (Exhibit E and Exhibit F).

ASSEMBLY BILL 354 (1st Reprint): Revises provisions relating to firearms. (BDR 15-251)

ASSEMBLY BILL 355 (1st Reprint): Revises provisions relating to firearms. (BDR 15-937)

Neither bill has an amendment.

Assembly Bill 354 prohibits under certain circumstances a person from possessing or causing a firearm to be present within 100 feet of an entrance to a place the person knows or should know is an election site. The prohibition does not apply to a law enforcement officer engaged in the performance of official duties; a private guard or security personnel hired by the owner of the facility or property where the election site is located among others. A person who possesses the firearm in a vehicle so long as he or she does not brandish the firearm or remove it from the vehicle; or a person who lawfully possesses a firearm in a place of residence, business or a private property within 100 feet of the entrance to an election site.

A person who violates the prohibition is guilty of a gross misdemeanor, except if he or she knowingly possesses a firearm or causes a firearm to be present with the specific intent to disrupt, interfere with or monitor the administration of the election, the counting of votes or any person who is voting or attempting to vote. Then the person is guilty of a Category D felony. The bill additionally prohibits a person from (1) selling, offering to sell or transferring; and (2) possessing, purchasing, transporting or receiving an unfinished frame or receiver, ready frame or receiver or market frame or receiver unless the recipient is a firearms dealer, importer or manufacturer or such a firearm has been imprinted with a serial number issued by a firearms dealer, importer or manufacturer in accordance with federal law and any adopted regulations.

Assembly Bill 355 provides a person less than 21 years of age is prohibited from handling, having possession of or controlling a semiautomatic shotgun or semiautomatic center-fire rifle. The bill provides an exception for a person who is less than 21 years of age and a member or an honorably discharged member of the armed forces, the National Guard or Reserve Component or a law enforcement officer.

A person who aids or knowingly permits a person who is less than 21 years of age to handle, possess or control such firearms is guilty of a misdemeanor for a first offense. A person who knows or has reason to know that there is substantial risk that a person who is less than 21 years of age will use such firearms to commit a violent act is guilty of a Category C felony for a first offense; a person who commits a second or subsequent offense of either crime is guilty of a Category B felony with a prison term of not less than one year and not more than six years and a fine of not more than $5,000.

A person does not violate these provisions if the firearm stored in a securely locked container or at a secure location was obtained because of an unlawful entry or the injury or death resulted from an accident related to target shooting, sport shooting or hunting. Unless a greater penalty is provided by law, a person is guilty of a misdemeanor if he or she negligently stores or leaves such firearms at a location under his or her control and knows or has reason to know that a person who is less than 21 years of age who is prohibited from handling, possessing or controlling a firearm may obtain it.

The bill clarifies a child who is 14 years of age or older who possesses a valid hunting license or is at his or her residence may not handle or control a semiautomatic shotgun or semiautomatic center-fire rifle. The bill requires any rifle or shotgun that a child 14 years of age is otherwise entitled to handle, possess or control at his or her residence is to remain unloaded and stored in a securely locked container when not in use.

SENATOR HARRIS MOVED TO DO PASS A.B. 354 AND A.B. 355.

SENATOR OHRENSCHALL SECONDED THE MOTION.

SENATOR HANSEN:
We had a robust discussion about a single sentence in the Fourth Amendment on unreasonable searches and seizures. Something that should have been made clear to all of us is how important it is to hear all sides of an issue.

The Committee heard A.B. 354 and A.B. 355 in a joint hearing with our counterparts in the Assembly. We had an hour and 45 minutes of proponents' testimony and then allowed expert witnesses in the audience merely a single minute to talk about both bills.

This Committee is chiefly made up of attorneys. Everybody here knows what the jury's decision is likely to be if you give an hour and 45 minutes to the prosecution and a single minute to the defense. That is what happened in that so-called joint hearing.

As for Assembly Bill 354, it is already illegal to intimidate in any way, shape or form anybody attempting to vote in the State. Therefore, section 1 is entirely redundant. In the sections about requiring so-called ghost guns to be registered, the entire purpose of that is to allow the Bureau of Alcohol, Tobacco, Firearms and Explosives to continue to expand what is already illegal. A registry of firearms would ultimately lead to potential confiscation by the government.

As far as the bill's ability to prevent crimes, the number of cases whereby people have been prosecuted when a weapon was found to be registered to that individual is almost nonexistent. Any criminal with brains in his or her head would not use a gun registered to himself or herself to commit a crime and then leave it at a crime scene. When that has occurred, in almost every single case it is because the assailant was shot or wounded in the act of the crime and the firearm could be traced directly to him or her.

Assembly Bill 355 sets up an incredible violation of the Second Amendment rights of people who are the ages of 19 and 20. Semiautomatic weapons are the most common weapons used in the United States. They include the AR-15, which has somehow become a big thing everybody is talking about. Since 2010, 200 million firearms have been purchased by U.S. private citizens. An estimated one out of five has been an AR-15. In other words, there has been an expansion of almost 40 million of these weapons.

Since 2010, the American people have voted with their pocketbooks by purchasing semiautomatic weapons, including AR-15s. I purchased one a couple of years ago.

What is fascinating and disturbing about A.B. 355 is it seeks to limit semiautomatic shotguns. They are probably one of the most common guns used by hunters, including those who are the ages of 12, 13, 14 and 15, including me when I was a young man. Now, owning shotguns would be a criminal act to the age of 21.

We had a great discussion on protecting constitutional rights today. Our constitutional right under the Second Amendment is the right to keep and bear arms shall not be infringed upon. We just talked about narrow exceptions to the Fourth Amendment and how we want to make sure to keep them exceptionally rare. Yet here we are expanding and absolutely destroying in some cases the same constitutional right that has been determined by the U.S. Supreme Court to be a foundation of the Bill of Rights: the Second Amendment.

Rather than doing everything possible to keep violations of the Constitution as narrow as possible to protect the rights of our citizens, with A.B. 354 and A.B. 355 we are expanding such violations beyond anything I have ever seen.

This move to ban semiautomatic weapons is not only a violation of the Second Amendment, it violates common sense. It will create a huge criminal class in Nevada of perfectly reasonable people who are using semiautomatic weapons, especially for hunting.

The storage portion of A.B. 355 is disturbing because I thought we were getting rid of that law. In the last year, there has been a spike in the number of minority women in particular buying handguns because they live in high-crime areas and police just flat-out cannot get there in time to help prevent crime.

If such a woman in a high-crime area keeps a handgun in her nightstand, somehow when officers show up, she could be prosecuted for not properly storing that firearm. This basically denies and criminalizes her ability to protect herself when the police—by their own acknowledgement—cannot get there in a reasonable amount of time. Is that not an example of why we need the Second Amendment?

I am disturbed by this whole process beginning to end. I am disturbed we are putting these two bills on a consent calendar. I am disturbed the citizens of Nevada were not granted their right to come to a hearing like we had today and do exactly what Mr. Piro, the other public defenders and all the people did to expand our understanding of the implications of A.B. 356.

I realize the Committee is not an impartial "jury." Everybody on this panel probably had their minds made up on the bills before the hearing. However, it is important the citizens of Nevada feel they have a right to express their views in front of their representatives to make sure the bills had a fair hearing and then let the chips fall where they may.

That right was deliberately denied to the citizens of this State on April 6, 2023, when A.B. 354 and A.B. 355 were heard. This is my seventh Session on Judiciary Committees in both Houses. That day was probably the one time I really felt almost ashamed of the legislative process.

I will say, Madam Chair, you did your best to make that hearing fair. But in my opinion, the whole process was an embarrassment to the integrity of this Body in both Houses. It was not a hearing; it was a charade masquerading as a hearing.

I am profoundly opposed to A.B. 354 and A.B. 355. The whole proceedings were rotten from beginning to end. Now to put them on a consent calendar and not have a separate discussion of each one in this Committee right now when we did not have a proper joint hearing is like an adding salt to the wound. I urge my colleagues on constitutional, fairness and unreasonableness grounds to vote no on this consent calendar.

CHAIR SCHEIBLE:
While we disagree on policy, I do agree that having everybody's voices heard does make the process work better.

SENATOR STONE:
You have been a wonderful Chair and always allowed both sides of an issue to be heard. You did not preside over the joint hearing. If you had, you would have given deference to the opposition as always.

That hearing handled by the Assembly was a mockery of democracy—I do not know how else to put it. The opposition needed to be heard. We can always agree to disagree, but everybody deserves equal time before their elected officials to hear both sides so Committee members can come up with their own conclusions and vote.

We spent a lot of time today discussing the Fourth Amendment. What we were talking about is the integrity of the Constitution. What is probably most disturbing to me about A.B. 355 is it is a mirror image of the same law passed by the California Legislature. The U.S. Court of Appeals for the Ninth Circuit has ruled California's ban on the sale of semiautomatic weapons to adults and people under the age of 21 is unconstitutional. Appeals Court Judge Ryan Nelson wrote,

> America would not exist without the heroism of the young adults who fought and died in our revolutionary army. Today we reaffirm that our Constitution still protects the right that enabled their sacrifice: the right of young adults to keep and bear arms.

The last thing we want to see is young hunters arrested by police for their hunting hobby. We have a lot of hunters, certainly in northern Nevada although maybe not as many in southern Nevada. Hunting is a cultural sport families pass on from one generation to another. Now we are criminalizing that tradition.

I agree with my colleague about the single moms who want to protect their families and homes and that the response time of public safety officers is not always as fast as we would like. Sometimes a minute or two can make the difference to somebody fending off a criminal trying to break through a window to attack a family.

Sometimes, a weapon needs to be readily accessed. The mom cannot go into a gun safe to get it while somebody is taking a crowbar to the door. She needs to have it by close by, hopefully where the kids do not know where it is but ready to use to protect her family. That is what the Second Amendment is all about: the right to bear arms to protect yourself. We are taking that right away from a lot of single moms.

If A.B. 354 is passed, it will be public knowledge polling places are gun-free zones. While we think that is a safe space, that knowledge will invite some

nefarious people who know there is no one there to defend us when we vote. The 2024 Presidential election could be contentious; I worry there may be potential mayhem if we do not have people with constitutionally guaranteed carry concealed weapons or some type of a defense in case a crazy person unloads his or her firearm. I also urge the Committee to vote no on the consent calendar.

THE MOTION PASSED. (SENATORS HANSEN, KRASNER AND STONE VOTED NO.)

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CHAIR SCHEIBLE:
We will close the work session. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 3:12 p.m.

RESPECTFULLY SUBMITTED:

_____
Pat Devereux,
Committee Secretary

APPROVED BY:

_____
Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Introduced on Minute Report Page No.**	**Witness / Entity**	**Description**
	A	1		Agenda
	B	1		Attendance Roster
A.B. 356	C	10	Jason Walker, Mary Sarah Skinner / Washoe County Sheriff's Office	Proposed Amendment
A.B. 356	D	39	Senator Melanie Scheible	Two Documents in Support
A.B. 354	E	39	Patrick Guinan	Work Session Document
A.B. 355	F	39	Patrick Guinan	Work Session Document