MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-second Session
May 18, 2023

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:16 p.m. on Thursday, May 18, 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 Cecelia González, Assembly District No. 16
Assemblywoman Alexis Hansen, Assembly District No. 32

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Karly O'Krent, Counsel
Kelsey DeLozier, Counsel
Jan Brase, Committee Secretary

OTHERS PRESENT:

Nathaniel Erb, Innocence Project
Vern Pierson, District Attorney, El Dorado County, California
Jennifer Noble, Nevada District Attorneys Association

John J. Piro, Clark County Public Defender's Office
Erica Roth, Washoe County Public Defender's Office
Christopher Ries, Las Vegas Metropolitan Police Department
Lilith Baran, American Civil Liberties Union of Nevada
Greg Herrera, Nevada Sheriffs' and Chiefs' Association
Jason Walker, Washoe County Sheriff's Office
Quentin Savwoir, President NAACP Las Vegas
DaShun Jackson, Children's Advocacy Alliance
Katie Banuelos, Libertarian Party of Nevada
Jagada Chambers
Yesenia Moya
Jessica Orta
Leslie Turner
Garrett Gordon, Community Associations Institute PAC, Nevada
Marcie Ryba, Executive Director, Nevada Department of Indigent Defense Services
Vinson Guthreau, Executive Director, Nevada Association of Counties

CHAIR SCHEIBLE:
I will open the hearing with a work session.

PATRICK GUINAN (Policy Analyst):
I will read bill summaries from respective work session documents for Assembly Bill (A.B.) 126, A.B. 159 and A.B. 227 (Exhibit C, Exhibit D and Exhibit E). There are no amendments on the bills.

ASSEMBLY BILL 126 (1st Reprint): Revises provisions governing business entities. (BDR 7-762)

ASSEMBLY BILL 159: Revises provisions relating to cruelty to animals. (BDR 16-71)

ASSEMBLY BILL 227 (1st Reprint): Revises provisions relating to domestic relations. (BDR 11-660)

CHAIR SCHEIBLE:
I will accept a motion to do pass A.B. 126, A.B. 159 and A.B. 227.

SENATOR NGUYEN MOVED TO DO PASS A.B. 126, A.B. 159 AND A.B. 227.

SENATOR DONDERO LOOP SECONDED THE MOTION.

SENATOR OHRENSCHALL:
I will vote to support A.B. 159 but reserve the right to change my vote on the Senate Floor.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SCHEIBLE:
I will open a work session on A.B. 75.

ASSEMBLY BILL 75 (1st Reprint): Revises certain requirements relating to securities. (BDR 7-145)

MR. GUINAN:
I will read the summary of A.B. 75 from the work session document (Exhibit F). This bill authorizes the adoption of regulations to establish requirements for transactions involving an offer to sell or the sale of a security to a Nevada certified investor. Two proposed amendments are included. The first is a friendly amendment from the Office of the Secretary of State. The intent of the amendment is to restore registration by qualifications found in *Nevada Revised Statutes* (NRS) 90.490 and the registration fee found in NRS 90.500 for all other securities outside of the framework for sales to certified investors. Assemblyman Steve Yeager, in response to a suggestion from Senator Harris during the bill hearing, offered the amendment which adds language to modify the definition of a Nevada-certified investor as it pertains to couples. The proposed language to section 2, subsection 1, paragraph (b) states a certified investor must have reported an income on the federal income tax return for the immediately preceding calendar year that exceeds the greater of either the median household income or $100,000 for filing as an individual person or $150,000 for filing as a couple.

CHAIR SCHEIBLE:
I would accept a motion to amend and do pass A.B. 75.

SENATOR NGUYEN MOVED TO AMEND AND DO PASS AS AMENDED A.B. 75.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SCHEIBLE:
I will open the work session on A.B. 356. An amendment was proposed by an Assembly member who did not sponsor the bill. My understanding is that the sponsors are accepting her amendment.

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

MR. GUINAN:
I will read the summary of the first reprint of A.B. 356 from the work session document (Exhibit G). The bill provides that a person who 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 another person's motor vehicle without the knowledge and consent of the vehicle's owner. These provisions do not apply to a law enforcement officer who installs conceals or otherwise places a mobile tracking device in or on a motor vehicle pursuant to a warrant or a court order.

The friendly amendment, Exhibit G, offered by Assemblywoman Brittney Miller replaces the word law enforcement "officer" with "agency" and clarifies that the bill's provisions do not apply to a law enforcement agency that installs a tracking device in accordance with all applicable requirements of the U.S. Constitution, the Nevada Constitution and the laws of this State.

SENATOR STONE:
I welcome the amendment offered by Assemblywoman Miller and support A.B. 356.

SENATOR HANSEN:
I appreciate the Committee and Chair Scheible for the robust discussion of A.B. 356. We raised awareness and appreciation for the U.S. Bill of Rights. Many members of this Committee worked diligently to make certain we protected constitutional rights. In my years with the Legislature, it was probably one of the best discussions I have been involved with. The amendment ensures that the law enforcement community will be in full compliance with the essential provisions of the Bill of Rights. I support A.B. 356.

CHAIR SCHEIBLE:
I will accept a motion to amend and do pass A.B. 356.

> SENATOR NGUYEN MOVED TO AMEND AND DO PASS AS AMENDED A.B. 356.
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> SENATOR STONE SECONDED THE MOTION.
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> THE MOTION PASSED UNANIMOUSLY.

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CHAIR SCHEIBLE:
I will open the work session on A.B. 371.

ASSEMBLY BILL 371 (1st Reprint): Makes various changes relating to parentage. (BDR 11-140)

MR. GUINAN:
I will read the summary of A.B. 371 from the work session document (Exhibit H). The bill enacts provisions of the Uniform Parentage Act governing parentage and the establishment of parent and child relationships. Among other things, the bill revises provisions relating to proceedings to adjudicate parentage, assisted reproduction and gestational agreements. The State Board of Health is authorized to adopt regulations relating to an acknowledgement or denial of parentage. The bill also establishes provisions governing genetic testing in proceedings to adjudicate parentage and revises provisions relating to assisted reproduction and gestational agreements and other items.

Two friendly amendments, Exhibit H, have been proposed. The amendment offered by Kimberly M. Surratt removes the term "surrender" regarding surrogacy arrangements to eliminate any confusion over parental rights and it adds the phrase "acknowledge" the intended parents are the legal and physical custodians of the child where appropriate in the bill.

The Clark County amendment makes relatively minor changes to the bill. First, it permits the Registrar of Vital Statistics to release information relating to an acknowledgement or denial of parentage to an agency which provides child welfare services. It clarifies that a child welfare agency may maintain a proceeding to adjudicate parentage in accordance with NRS 432B. It provides that the venue for a parentage action brought pursuant to NRS 432B is in the county in which the action is commenced. Finally, it provides that a court may combine a proceeding to adjudicate parentage with a proceeding for the protection of a child from abuse and neglect.

These amendments do not conflict with each other, and the Committee can approve one, both or neither.

CHAIR SCHEIBLE:
I would accept a motion to amend and do pass A.B. 371.

> SENATOR OHRENSCHALL MOVED TO AMEND AND DO PASS AS AMENDED A.B. 371.
>
> SENATOR NGUYEN SECONDED THE MOTION.

SENATOR HANSEN:
While I agree the section of NRS needs refinement, I am uncomfortable with the gender-neutral language in A.B. 371. I think this bill goes too far, and I will be a reluctant no vote.

SENATOR KRASNER:
We have just received the two amendments to the bill. I will vote yes to get it out of Committee but want to reserve my right to change my vote prior to Floor consideration.

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

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CHAIR SCHEIBLE:
I will open the work session on A.B. 373.

ASSEMBLY BILL 373 (1st Reprint): Revises provisions relating to deceptive trade practices. (BDR 52-773)

MR. GUINAN:
I will read the summary of A.B. 373 from the work session document (Exhibit I). The bill revises provisions relating to deceptive trade practices. If the Attorney General has reason to believe that a person has engaged or is engaging in deceptive trade practices, the bill authorizes the Attorney General to obtain appropriate relief including the recovery of civil penalty, disgorgement, restitution or the recovery of damages as *parens patriae*.

The Attorney General's Office has offered a friendly amendment, Exhibit I. It adds language clarifying the Attorney General's ability to bring action under the bill's provisions, raises the civil penalty for a deceptive trade practice directed toward a disabled person from $12,500 to $15,000 and increases the civil penalty for deceptive trade practice directed toward a minor from $12,500 to $25,000.

CHAIR SCHEIBLE:
I will accept a motion to amend and do pass A.B. 373.

SENATOR STONE MOVED TO AMEND AND DO PASS AS AMENDED A.B. 373.

SENATOR NGUYEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SCHEIBLE:
This completes the work session. I will open the hearing on A.B. 193.

ASSEMBLY BILL 193 (1st Reprint): Revises provisions relating to custodial interrogations of children. (BDR 14-229)

ASSEMBLYWOMAN CECELIA GONZÁLEZ (Assembly District No. 16):
With me today to assist in the presentation of A.B. 193 is Nathaniel Erb, the State Policy Advocate, Innocence Project, and Vern Pierson, a district attorney from El Dorado County, California.

Police officers have a legal and ethical responsibility to uphold the law and protect the rights of all individuals including children in custody. Lying to a child in custody can violate these responsibilities and potentially harm the child's well-being. Children in custody are often vulnerable and may be experiencing high levels of anxiety and stress. Lying to them can create and exacerbate these feelings and may lead to fear, confusion and mistrust.

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. At present, four or five states including Nevada are considering legislation on this topic and several have enacted laws addressing custodial interrogation of a child.

NATHANIEL ERB (Innocence Project):
We represent people who have been wrongfully convicted. In reviewing all cases of wrongful convictions revealed to date, it is clear there continues to be an issue of courts and juries failing to identify and exclude false confessions. The most common contributing factor in homicide exonerations is DNA evidence. Three of the four wrongful convictions based on false confessions in Nevada were homicide cases.

False confessions have caused finders of fact to ignore alibi evidence and contradictory issues in a case in the same manner as false or misleading forensic evidence and false eyewitness statements tend to cause. However, confessions are not often given the same legal scrutiny as these and other types of evidence because there is a pervasive belief that one would not confess to something one did not do.

For the Innocence Project, the question has been what continues to cause false confessions and what has permitted them to be used to convict innocent people. Law enforcement, prosecutors and those who represent the innocent have independently come to the same conclusion that manipulating suspects through lies about evidence and leniency is a leading concern. The federal government created the High-Value Detainee Interrogation Group (HIG) in 2009 and identified this method as the most effective methods for investigating terrorist threats. The group identified that these types of tactics, while sometimes permissible and useful, carry great risks and do not produce reliably accurate information. Further, the group identified more reliable techniques that are now the core training of the Federal Law Enforcement Training Centers.

Later in 2014, the International Association of Chiefs of Police published the first modern guide on interrogating juveniles and explicitly recommended using more reliable tactics. National law enforcement trainers have begun to end teaching the use of lies to manipulate suspects. While proactive adoption of improved techniques has begun, there still remains a need to heighten legal scrutiny in cases where law enforcement feels deception is necessary.

The U.S. Supreme Court has ruled that these types of tactics are not per se barred. Its rulings have not expressed the validity or need for these tactics and have often called them directly into question. The Court's rulings have stated it is the role of state legislatures to create rules of evidence addressing this issue. In response, eight states have passed laws barring or heightening the scrutiny of statements derived through the use of lies about evidence or leniency.

This bill provides this slightly heightened scrutiny by requiring an analysis of reliability in addition to voluntariness under the current judicial standard. Nationally, the Nevada statute would be one of the more lenient laws of other states since some others create an outright per se bar. Others have a heightened legal standard. We still believe this would be an important analysis to inject into the process.

VERN PIERSON (District Attorney, El Dorado County, California):
I have been a prosecutor for more than 30 years and elected district attorney for the past several years. I am the former President of the California District Attorneys Association and the author of the *California Evidence Pocketbook*. I mention my background because, while I am not an expert on Nevada law, I am an expert on California law, criminal evidence and procedure.

I can be fairly characterized as someone who is knowledgeable in the science of interrogation and interrogation training methods over the last 70 years.

I am speaking primarily to focus on the use of deception. I understand the bill bans the use of deception as it relates to juveniles. More broadly, I would say the important thing to note is that while primary training occurring in the United States over the last six or seven years has employed the use of deception, we know from an extensive amount of research by the Counter Terrorism Policing organization in the United Kingdom (UK) and others in California is that it is unnecessary to use deception in the interview room.

Throughout my career as an attorney, I have been a prosecutor. My motivation is to hold guilty people accountable for their actions. At the same time, we have an ethical responsibility to ask ourselves—Do we think it is a good idea for police officers to knowingly lie to a child in order to get the child to tell the truth? I would submit to you as the longtime former chair of the District Attorneys Association Ethics Committee, we have an ethical problem. We have an ethical problem in society when we say it is acceptable for police officers to intentionally lie to someone in the interview room.

Over the last four years, my office and prosecutors' offices throughout California have begun the process of training officers on a methodology largely developed by the HIG. The methodology is based upon rapport and communication approaches not practiced in the past. This method is more effective than deception and dishonesty.

A book entitled *Anatomy of Interrogation Themes* outlines the most prevalent training techniques used in the United States. Over half a million officers have been trained from these guidelines, including those in Nevada. One section addresses developing a theme for talking to juveniles. The book discusses an extreme case when a man has been taken into custody for sexually assaulting his 11-year-old stepdaughter. A quote from the text:

> Before going into the interview, an important procedure for the investigator to follow prior to any interrogation is to select at least 5 reasons why the subject may be justified in sexually assaulting an 11-year-old and committing the act, and 5 ways the interrogator can minimize the subject's behavior.

Though this is an extreme example, law enforcement officers have been trained to think this way over the last 60 years. They have come to believe it is necessary to lie to children and to adults to get them to tell the truth. We are talking about lies justifying the sexual assault of an 11-year-old. I have been troubled by this my entire career.

I personally experienced what it is like to reinvestigate a case when a person was wrongfully incarcerated for 14 years for murder. He had nothing to do with the crime. It is time we change this practice.

ASSEMBLYWOMAN GONZÁLEZ:
A proposed amendment from the Nevada District Attorneys Association has not been accepted. I expect it will be part of the conversation today.

CHAIR SCHEIBLE:
I did have a chance to review the amendment. I will allow them to discuss the amendment and answer questions.

SENATOR OHRENSCHALL:
Have you found in your research and in your career as a prosecutor that untruthful statements made to children who are under arrest produce false confessions?

MR. ERB:
At the Innocence Project, we see this result across both child and adult cases. When fully functioning adults are lied to about evidence, particularly under the pressures of the interrogation room, the person confesses to get out of the room. I am aware of cases when individuals confessed because they were desperate to end the interview. The police have told them they have bloody handprints, and it will be tested for DNA. The innocent person thinks the evidence will exonerate him or her irrespective of the confession. Next, the suspect finds he or she is found guilty solely on the basis of the confession of guilt.

In the case of children, the International Association of Chiefs of Police Training manual, in 2014, covered children's interrogations. The manual notes when pressuring children in this way, they may adopt the lies and start to believe they actually committed the crime. Children trust law enforcement officers not to lie. If law enforcement officers said that the children did it, they start to believe. It

has been a common theme in the research by interrogators and researchers independently and is the reason these tactics are inherently dangerous.

MR. PIERSON:
We investigated and exonerated someone who was an adult when she made a false confession. We know from child development research, what is true for adults, it is certainly true with children. I have not personally been involved in a case when a juvenile has been lied to and falsely confessed, although I am aware of a number of published cases. The science and research demonstrate it is not a reliable way elicit a truthful answer.

SENATOR OHRENSCHALL:
You mentioned eight jurisdictions that have passed similar statutes either forbidding making false statements to a child in custody during an interrogation or have heightened scrutiny. In those jurisdictions, are you aware of subsequent problems for law enforcement or for prosecutors in complying with the restriction on making false statements? Have cases been stalled when they should have been completed? Is there any data or studies on the subject?

MR. ERB:
There have not been cases like those you described. These laws in Illinois and Oregon were written with participation of prosecutors' offices and law enforcement. It was supported unanimously by all the agencies. The language has been modified over the years but is consistent with the original intent of legislation that was written directly with law enforcement and prosecutors. The original version of A.B. 193 was introduced in the same form that Utah enacted, and its law was also endorsed by every single law enforcement agency across the Country and across the State and all the prosecutor's offices. We have not heard of any instances. Every single state that I worked with on this issue has worked closely with law enforcement and prosecutors. The bill mirrors the same language but with some extra caveats and carveouts in case of exigent circumstances.

SENATOR KRASNER:
Is it legal in Nevada for law enforcement to lie to a child while in custody or during custodial interrogation?

ASSEMBLYWOMAN GONZÁLEZ:
Yes.

SENATOR KRASNER:
Why is this allowed? What is the rationale for allowing law enforcement to lie to a child when children are taught police are our friends and are there to protect and serve?

VICE CHAIR HARRIS:
We have an amendment proposed by the Nevada District Attorneys Association. This question may be better suited for their representatives.

SENATOR KRASNER:
I would like to hear a response from the district attorney from California.

VICE CHAIR HARRIS:
Absolutely. I would also encourage you to ask the same questions of the Nevada district attorneys.

MR. PIERSON:
In terms of Nevada law, I would defer to the Nevada District Attorneys Association. The question as I understood it is why have we been training officers this way for the last 60 years? We have to recognize that there was a time when law enforcement interrogation practices were aggressive and physical. Lying to a suspect has been viewed as psychological coercion as opposed to physical coercion and was considered to be a step forward 60 years ago. Increasingly over the last several years, it has been more of a marketing campaign. In other words, detectives are told this is the best way to go in and get an interview. This is the best way to secure a confession.

The truth-detecting training includes an interrogation mode when officers repeatedly cut off the individual and steer him or her back to a predetermined conclusion. Law enforcement training programs are built around teaching officers how to use pseudoscience to detect clues on whether someone is telling the truth. These training programs are designed by competing companies that use aggressive marketing campaigns to secure extremely profitable contracts. A lot of money can be made in this industry, and that is the reason for an emphasis on lying during interrogations.

Fortunately, since formation of the HIG, millions of dollars have been spent researching whether these types of methodologies actually work. The UK spent a significant amount of money researching this issue. The research says it does not work. When officers convert to a rapport-based interviewing style, in which essentially one is not being nice but is treating the person like a human, there is significantly more yield. It is not sexy, it is not glamorous, but it is a practical reality of what works as opposed to a product of a marketing campaign.

ASSEMBLYWOMAN GONZÁLEZ:
If you look at the criminal justice system, historically we have had "tough on crime" phases. Throughout the years, we have seen a good deal of police violence. We are now talking about police policies that do not work and are considering alternatives.

JENNIFER NOBLE (Nevada District Attorneys Association):
We have submitted a proposed amendment (Exhibit J) to A.B. 193. Regarding Senator Krasner's question as members of the Committee may know, often when asking a question in the law, there is not a clear yes or no answer. The case in point is *Sheriff v. Bessey*, 112 Nev. 322, 914 P.2d 618 (1996). In the case, the police used a falsified report during the interrogation of a minor. In evaluating whether to admit portions of the minor's confession, the court employed a totality of circumstances evaluation as is the practice of the U.S. Supreme Court. The court also considered the falsified report, the nature of the confession and whether the false evidence presented during the interview was likely to produce a false confession. *Sheriff v. Bessey* indicates it is generally disfavored in Nevada but acknowledges there are circumstances in which false evidence may be used while permitting admission of subsequent statements. That is the state of the law in Nevada. That is the only case we have on point.

SENATOR KRASNER:
It is generally disfavored to lie to children in custody, but there are exceptions. What are the exceptions?

MS. NOBLE:
As with any case involving the voluntariness of a statement, there are not enumerated exceptions. The fact deception was used is part of the court's overall analysis regarding the voluntariness of the confession. During our extensive discussions on this bill, it was uncontested by any stakeholder that

we have no examples in Nevada of wrongful convictions of juveniles arising from the use of deception during law enforcement custodial interview.

To answer your question, Senator Krasner, whenever we are considering the voluntariness of the suspect's statement during custodial interview, whether an adult or a child, both the U.S. Supreme Court and the Nevada Supreme Court conduct a fact-specific inquiry and consider the totality of the circumstances. Factors include but are not limited to the youth of the accused, a lack of education or low intelligence, the lack of advice of constitutional rights, the length of detention, repeated and prolonged nature of the questioning, and the use of physical punishment such as deprivation of food or sleep.

An additional protection for juveniles is A.B. 132 of the 81st Session which outlined juvenile Miranda rights. I thank Assemblywoman Gonzalez for working with us and the Innocence Project to try to reach consensus on this bill. We have had respectful dialogue and a useful exchange of ideas and policy positions for all the stakeholders but were not able to reach consensus yet. We do have some lingering concerns that are reflected in the amendment, Exhibit J.

Assembly Bill 193 prohibits a peace officer or other person authorized to conduct a custodial interrogation of a child from making materially false statements or making implied promises of leniency or advantage. Our proposed amendment provides that section 1, subsection 1 of the bill does not apply when an officer is conducting an interview to obtain information necessary to timely investigate a homicide or attempted homicide.

I do not just sit before you today as a prosecutor. I sit before you as a mother to two boys who sometimes make poor decisions. I want their rights to be protected. That is something I want to balance with the fact that our children are in dangerous situations at school. Sometimes we cannot protect them from threats. In consideration of that, we built a homicide or attempted homicide exception in section 1, subsection 3, paragraph (a), subparagraphs (1) and (2). Corresponding language is included in subparagraph (b).

The amendment addresses one of the concerns John J. Piro raised during our many discussions on this bill. He was concerned this exception would be added into NRS 171, a chapter which includes proceedings to commitment, statutes of limitations, warrants and custodial interrogation. It is a long and complicated set of statutes.

Our amendment proposes to move the provisions of the bill to NRS 62C, which pertains to the rights of minor children in the custody of law enforcement. Chapter 62C of NRS contains juvenile Miranda rights, so it makes organizational sense to make this change. We also make clear in section 1, subsection 5 that nothing in this section shall alter the rights of a child who is subsequently certified as an adult pursuant to NRS 62B.

SENATOR STONE:
Can you differentiate a juvenile Miranda right from an adult Miranda right?

MS. NOBLE:
Assembly Bill No. 132 of the 81st Session was enacted and addressed a standard for juvenile Miranda rights. I will read them briefly and outline the differences. *Nevada Revised Statutes* 62C.013 contains the juvenile Miranda right language. A peace or probation officer who takes a child into custody pursuant to NRS 62C.010 shall, before initiating custodial interrogation, disclose to a child:

> You have the right to remain silent, which means you do not have to say anything to me unless you want to. It is your choice. If you choose to talk to me, whatever you tell me I can tell a judge in court. You have the right to have your parent or guardian with you while you talk to me. You have the right to have a lawyer with you while you talk to me. If your family cannot or will not pay for a lawyer, you will get a free lawyer. That lawyer is your lawyer and can help you if you decide that you want to talk to me. These are your rights. Do you understand what I have told you? Do you want to talk to me?

The language is adjusted for younger people.

SENATOR STONE:
I appreciate that it is worded so a child can understand what he or she is facing. In your testimony, are you saying law enforcement officers use these otherwise prohibited tactics in cases of murder or attempted murder? If an officer needs to deceive someone to get to the truth and solve a murder, you believe that it is necessary to use that tool?

MS. NOBLE:
We are trying to craft something that is flexible. In the event of a homicide or an attempted homicide involving juveniles when we believe ongoing threats exist, we suggest certain misrepresentations can be made. The court is going to look at the totality of the circumstances and decide whether any statements are voluntary.

I have one comment to add. Mr. Erb from the Innocence Project is an interesting person to talk with, and I have a lot of respect for him. We have talked about wrongful convictions, of which I understand there are four in Nevada. Two of the most famous wrongful conviction cases in Nevada involved adults. No known cases involved juveniles. DeMarlo Berry was convicted based on a jailhouse informant's testimony and Mr. Berry's subsequent false confession. Fortunately, the informant rescinded the testimony and Mr. Berry was exonerated. We are cooperative and are working with the Innocence Project on legislation to help alleviate the impact of those types of jailhouse informant confessions that can contribute to wrongful confessions.

In the case of Cathy Woods, she initiated a confession while in a mental facility outside Nevada. Her interviewers were not from Nevada. When we research factors contributing to wrongful convictions, we need to be diligent. I am not sure the nexus has been demonstrated between the ability to, at times, make certain representations to juveniles that are not correct in the context of an interview. It is clear under Nevada law they are generally disfavored. The court is going to look at the totality of the circumstances. No clear-cut answer to whether deception can be used with respect to juveniles is possible to discern.

SENATOR HARRIS:
You answered the first part of Senator Krasner's question regarding the legality of lying to juveniles. The second piece was, what is the rationale? Can you provide the Nevada District Attorneys Association's rationale for allowing a trained adult police officer to lie to a child? A child who was been taught to trust police.

MS. NOBLE:
I want to start by addressing one of the assumptions in your questions—that the child has been taught to trust the police. That is not always the case.

SENATOR HARRIS:
Skip the assumption. The question still stands. What is the rationale for allowing adults to lie to children to elicit confessions the adults think is the truth? What is the rationale for allowing this practice to exist?

MS. NOBLE:
The rationale in terms of our amendment which crafts language that goes beyond *Sheriff v. Bessey* and the U.S. Supreme Court precedent is that there are situations in which to protect other children, we have to get information quickly.

SENATOR HARRIS:
Are you making the argument the only way to get truthful information out of juveniles is to sometimes deceive them?

MS. NOBLE:
One of the primary problems is we are using the word deception. What was clear during our many discussions about this bill was that we could not agree on the meaning of the word deception. Say an officer interrogates my eight-year-old and says, I really like "Paw Patrol" while trying to build a rapport when that officer has never watched "Paw Patrol." Is that deception? If an officer asks, is there any reason your fingerprints might be on the gun? Is that deception?

SENATOR HARRIS:
Let us define it as making a materially false statement about evidence that is reasonably likely to elicit an incriminating response from the child. This is language from the bill.

MS. NOBLE:
My answer to your question is that there may be circumstances in which there is an exigent concern or emergency in which we are trying to get information quickly and we need it to protect other people.

SENATOR HARRIS:
Is the logic that the only way to get that information was to lie to a juvenile?

MS. NOBLE:
It is going to depend on the situation. I cannot answer definitively. It is going to depend on the facts and circumstances, the evidence that the officers have and other factors. I am sorry I cannot provide a better answer.

SENATOR HARRIS:
Are you familiar with the Reid Technique?

MS. NOBLE:
Yes, I am somewhat familiar with the Reid Technique. Although as you are aware, I do not conduct custodial interrogations.

SENATOR HARRIS:
Are you familiar with any of the studies suggesting the Reid Technique sucks?

MS. NOBLE:
I have looked over studies regarding the Reid Technique that conclude many in the law enforcement community believe it is not the best method.

SENATOR HARRIS:
Did those studies give you any pause about applying that technique or relying on confessions or any evidence that comes out of a custodial interrogation where that technique is used?

MS. NOBLE:
Those studies did not give me pause when I am looking at a bill with the current language that operates to create provisions that are inconsistent with the United States Supreme Court and inconsistent with the voluntariness and totality of the circumstances approach that the Nevada Supreme Court uses when it comes to deception. No, I had no pause in that context.

SENATOR HARRIS:
Why would this be inconsistent with the Supreme Court's decisions? I consider the Supreme Court a floor. Even if the Supreme Court says you can lie, there is nothing that says the State can decide to say no, you cannot lie and provide additional protections for juveniles. That is not necessarily inconsistent, is it?

MS. NOBLE:
It would be different. This Body could pass a law prohibiting interrogation of juveniles or anyone else in custody. That would arguably be inconsistent with Nevada Supreme Court authority. I am going to disagree with you.

SENATOR HARRIS:
This is the first time that ever happened. England, Australia, New Zealand and Germany prohibit lying during police interrogations. Do you lack confidence we could keep people safe if we do not prohibit lying to juveniles as do these other countries?

MS. NOBLE:
I have not looked at the laws of those specific countries. I do not know how the countries' laws define the word "lie." What is considered deception; what is considered rapport-building? I do not know the specifics—if a lie occurs, is every aspect of the statement suppressed? I do not know the answer to that question. In answer to your question, no, I am not confident we can keep people safe if we are prohibited in every circumstance from using deception.

SENATOR HARRIS:
I do not have any more questions, though I am disappointed.

MS. NOBLE:
I regret your disappointment, Senator. I do want to emphasize that Assemblywoman González has spent a great deal of time engaging with us as well as the Innocence Project and the law enforcement community.

SENATOR OHRENSCHALL:
The language about protecting life and property from imminent threat seems reasonable and possibly necessary. The suggested language to obtain information necessary to timely investigate a homicide or attempted homicide concerns me. How expansive could the language become? If a child is in custody and the questioning concerns a homicide or attempted homicide at a party two weeks earlier. Maybe this child is not a suspect, but the law enforcement officer says, "We have you on video at that party. Tell me who you saw shoot the gun."

Do you see this as being so expansive that it would cover a child who is not actually a suspect? I do not see it being limited to suspects of a homicide or

attempted homicide. Officers may use false statements to gather information on the child's family or friends who are suspects. The child may think he or she is being helpful by answering and thus get out of the situation.

MS. NOBLE:
When we craft language using the word "timely," we are trying to capture a sense of urgency. You have raised a valid concern. If we need to work on narrowing the language with respect to homicide and attempted homicide, we will welcome the opportunity.

SENATOR NGUYEN:
I also read the language to include child witnesses. I can imagine a ten-year-old who witnesses a grisly murder—allowing an officer to lie to the child about something that is terrible. This amendment carves out limited circumstances—murder and attempted murder. If this is a policy we want to move forward, it should not matter if it is a petty larceny or a murder case. If it is a bad policy and it is a bad practice, I do not know why we would want to make an exception in cases with the highest stakes.

The district attorney from California said it best. You as a district attorney would not want to have to go back and retry these serious cases because you are desperately holding on to this one exception. If it is bad for these children under these circumstances, why is it acceptable under other circumstances? You have cases on appeal all the time, and probably the worst situation is having to retry a case. You will have to put victims back through the process or release wrongly incarcerated suspects based on this bad practice.

MS. NOBLE:
I understand your point and appreciate your concern. It is important to know that when we are talking about the exception in the amendment, the courts still have to, under the Nevada Supreme Court precedent, evaluate the use of deception when they are considering all those factors that inform voluntariness. Deceptive interrogation is still going to be a factor among the others I listed in my earlier testimony. As a criminal law attorney, you know that is not an exhaustive list. Deception is still a factor the courts will consider. We cannot legislate it away because the Supreme Court is the supreme law of the land.

SENATOR NGUYEN:
To follow up on Senator Harris's comments, it sounds like you and I are going to disagree. My understanding is that the Supreme Court interprets the laws the Legislative Branch of government institutes.

The state of the law guides your practice. If we change the law, then it is up to the Nevada Supreme Court to interpret its constitutionality. I probably disagree with you about how the Legislative Branch works in conjunction with the Judicial Branch.

I have had the opportunity to review the report on interrogation best practices written by the High-Value Detainee Interrogation Group. I am looking at the report because I do not know where they stand. I am assuming they employ best practices in our State and do not apply Supreme Court or caselaw precedent as their floor. They are always striving for whatever the best evidence-based practices are in their law enforcement policies. Even though you mentioned it is disfavored to lie to children, the report finds it is beyond disfavored. The report says the practice is not accurate or effective. This may be a question to raise with members of law enforcement, but I wonder whether you have any thoughts on interrogation and investigation best practices.

MS. NOBLE:
I want to clarify something I said earlier. I was trying to communicate that even if I was advocating a policy allowing deception in interrogations with children as always or sometimes acceptable, neither I nor this Body could change the fact that the U.S. Supreme Court says, no, we are going to consider interrogation practices when we consider the voluntariness of the statement.

I am not an expert on interrogation techniques, but I can tell you whenever I look at records, whenever I listen to tapes, whenever I work in a habeas context or a petition for factual innocence, I am always looking at the interview to see if the totality of the circumstances, even if the courts found differently, indicate whether the subject's will has been controlled or the information is not reliable. That is a concern I have as a prosecutor. I cannot speak for the techniques or the philosophies of our law enforcement partners.

SENATOR KRASNER:
Section 1, subsection 3, paragraph (a), subparagraphs (1) and (2) of the proposed amendment state the questions asked by the peace officer or other

person are limited to those reasonably necessary to obtain information related to the imminent threat, homicide or attempted homicide. Would a law enforcement officer be able to say, "We were so worried about this imminent threat of homicide or attempted homicide that we told a child that we had his DNA and the law says if he is caught lying to us, his mom goes to prison?" I am serious. Is that a statement that could be made?

MS. NOBLE:
Can you restate your question for my understanding?

SENATOR KRASNER:
Could a law enforcement officer tell a blatant lie? Could he ask a child, "Do you know the law?" Could he say, "The law says because you are a kid, your mom is the one who will go to prison"?

I am concerned about the psychological effect of this practice on a child.

MS. NOBLE:
Any false statement from law enforcement would need to be reasonably necessary to obtain information. Is it reasonably necessary to say we are going to put a child's mom in jail? Probably not. Law enforcement would have to explain to the court why it was reasonably necessary.

SENATOR KRASNER:
Could the law enforcement officers argue they were worried about an imminent threat of homicide? We had to do something immediately. We know the child does not know the law, so we lied to him or her because it is legal.

MS. NOBLE:
Law enforcement officers could say anything, but they are going to have to say it to a judge under oath in the courtroom. It is up to a judge to decide whether it is believable.

SENATOR HARRIS:
You stated the lie has to be reasonable to obtain the information. The way I read this amendment is that a person has to reasonably believe the information sought was necessary to obtain information needed for a timely investigation of homicide. Regardless of how unreasonable the statement or question is—your mom is going to go to jail—as long as the officer felt that the information

sought was necessary, the officer would be allowed to do it. That is how I am reading the amendment.

MS. NOBLE:
I would note the reasonably necessary language is not only from our amendment. In section 1 of the bill in subsection 3, paragraph (a) reads "subsection 1 does not apply to a custodial interrogation of a child if the peace officer or other person who conducted the custodial interrogation of the child reasonably believed the information sought was necessary ... " Our amendment proposes to add to paragraph (a), subparagraph (2) relating to homicide or attempted homicide investigations. An officer still has to demonstrate the information, not the lie, is reasonably necessary.

SENATOR HARRIS:
The questions asked have to be reasonably necessary. That is my interpretation.

CHAIR SCHEIBLE:
I will defer to legal counsel.

KARLY O'KRENT (Counsel):
As written, the language we are discussing is an exception to the prohibition contained in subsection 1. As a result, the exception applies not to the line of questioning but rather the information being sought.

SENATOR HANSEN:
In Nevada, are you aware of anyone under the age of 18 who has had a conviction reversed because of a false confession?

MS. NOBLE:
No, I am not. We asked that question several times of representatives of the Innocence Project and Mr. Pierson, the district attorney from El Dorado County, and they are not aware of any instances of this nature.

SENATOR HANSEN:
Are we trying to solve a problem that does not exist? It is difficult to defend lying, but I do want to know whether our law enforcement community is using such unusual practices.

Maybe we do need to strengthen safeguards, but if that were the case, I would expect that there were a number of reversals of convictions based on false confessions following law enforcement deception during interrogations.

SENATOR NGUYEN:
When we talk about juvenile convictions, juveniles do not have actual convictions that would be overturned. They have adjudications. Is that correct?

MS. NOBLE:
That is correct. We do have cases in which the juvenile has certified up. That may be part of the reason juvenile overturned cases are not identified.

SENATOR NGUYEN:
We also have a system where over 90 percent of cases are resolved through plea negotiations. We do not have situations where a lot of people are going to trial and then later having their convictions overturned.

MS. NOBLE:
When discussing juveniles, probably not. I can tell you with regard to adults whether or not they plead, they file all sorts of materials. It is my day job to look through everything submitted for reasonable grounds to assert their conviction was wrongful.

SENATOR NGUYEN:
The way I read this is that child witnesses who are interrogated could potentially be lied to and/or manipulated. Law enforcement could be investigating the murder of an adult and the child is not a suspect. It may be possible to extract faulty confessions or evidence through deception. Am I correct in the presumption that the amendment allows for deceptive interrogation tactics with child witnesses?

MS. NOBLE:
The intent of this bill and our intent in crafting the amendment is we are talking about suspects in a custodial interrogation setting who are under the age of 18.

SENATOR NGUYEN:
It is intellectually inconsistent to have an exception for certain crimes. I have a hard time understanding why we would make an exception if lying to children is bad and produces potentially bad outcomes.

MS. NOBLE:
When anyone is trying to discuss and solve a problem, all involved have to agree on the nomenclature. We are using the words lying and deception, but I am not sure we are all agree on definitions.

CHAIR SCHEIBLE:
I want to make sure all of us in the room are operating under the same understanding of how this would function in practice. We are discussing the introduction of guidelines into statute regarding evaluation of a constitutional question. If you, Ms. Noble, are prosecuting my client who is 16 years old for murder and indict him, it goes to a grand jury. As a defense attorney, I am not in the courtroom. When the case comes to district court, the first thing I am going to do is file a writ of habeas corpus and try to have the charges dismissed.

One of the things I might argue would be that when the district attorney went to the grand jury, she put the detective on the stand and built her case around the fact that my client admitted to handling the gun. He was caught on video leaving the scene and had texted the victim earlier that day. Those might be your pieces of evidence, including my client's admission to handling the gun. Are you following me so far?

MS. NOBLE:
We are at a postgrand jury indictment. You file a pretrial petition for writ of habeas corpus indicating that during the grand jury proceeding we relied on statements and admissions your client made.

CHAIR SCHEIBLE:
Exactly. Now I want to argue that those admissions were involuntary and should be thrown out along with the case. I am going to argue to the judge that I want to avail my client of this remedy.

Assembly Bill 193 would add a reason to the list for dismissing a case based on involuntary statements. An attorney could argue the client is a minor and a peace officer knowingly made a materially false statement about evidence that is reasonably likely to elicit an incriminating response from the child. The first thing I would do in a habeas petition hearing is ask the judge to rule on whether the investigating officer made a material misrepresentation. Did the officer say the police have the minor on video with the gun when, in reality, all they have is

the minor on the video? If the court rules in my favor agreeing this was a material misrepresentation, we go to part two.

That is known as presumptively involuntary. If we do not accept the amendment to the bill, we stop there. That statement is involuntary and has to be thrown out, and I win. If we accept the amendment to the bill, there is a second inquiry which is whether the interrogation techniques fall under the imminent need exception. Then we would have another argument in front of the judge. The investigators would say the cops had to talk to my client that day. They were looking for the weapon. They could say they told the minor he is on camera with the weapon therefore increasing the likelihood of finding it. It was necessary to deceive him in order to investigate a recent homicide. I will make my argument. It was not necessary. It was not timely. It did not lead you to the weapon anyway. Then the judge will make a ruling.

The difference between the bill as written and the bill with the amendment is that second part, the argument in front of a judge of whether this instance falls under the narrow exception of a murder case. The prosecutor would still have to show that it was necessary to obtain information. There would still be an opportunity for the defendant through the counsel to argue the deception was not necessary and possibly get the statement thrown out.

Is this the difference between the bill as written and the bill as amended?

MS. NOBLE:
That is correct. Your example makes the situation clear.

CHAIR SCHEIBLE:
We will move on to testimony. For testimony in support of A.B. 193, I ask speakers to specify their support for the bill with the amendment or for the bill without the amendment.

MS. NOBLE:
The Nevada District Attorneys Association supports A.B. 193 with the amendment.

JOHN J. PIRO (Clark County Public Defender's Office):
We support A.B. 193 without the amendment. If the amendment were to be added, we would oppose this bill and ask this Committee to kill it. Voluntary is

always a weird question. Little kids are brought into rooms and padlocked to the table. Sometimes they come in and are not handcuffed. They are told they are free to leave, but a child in a room with an adult with a badge and a gun will not feel free to leave. There is a power imbalance between children and adults.

Senator Hansen asked whether juvenile convictions have been overturned based on deceptive interrogations. The juvenile system is different from the adult system. We work to rehabilitate the child, and a child's conviction is rarely appealed. If there is a problem, it rarely sees the light of day, especially in juvenile proceedings. Sometimes our plea agreements require juveniles to agree to waive appeals. I wish they were not that way. It is a commitment made long before I became a public defender. Every law enforcement officer and district attorney I know tells their children to ask for a lawyer if they are interrogated. I do not understand why officers do not always do more to protect the rights of children in the general public.

We talked about the Cathy Woods case. Police thought that confession was legitimate even though they were interviewing a woman at a mental health hospital. The court did nothing with that information. My colleague from the north, Washoe County Public Defender Maizie Pusich, fought the case for decades until Ms. Woods was released.

Courts are behind on the science, and that is the reason the Innocence Project is bringing the science forward. Assembly Bill 193 is an important bill without the amendment.

One of the reasons I became a public defender was, as an undergraduate, I viewed a documentary titled *Murder on a Sunday Morning* which depicted a juvenile in Florida who was coerced into a false confession in a murder case. The film follows the juvenile's defense team as they build their case and present it in court. In the end, the jury only deliberates for 45 minutes before finding the defendant not guilty.

Most of the pressure happens to children in high-profile murder and sex offense cases. Police want to find a suspect and sometimes procedures are not followed. I do not mean to impugn the integrity of the officers here today, but sometimes things happen, and protections should be in place. I recommend watching the documentary to see what could happen to a child when placed in

a power imbalance situation. It illustrates the legal hoops defense attorneys have to jump through to protect minors.

ERICA ROTH (Washoe County Public Defender's Office):
We support A.B. 193 without the amendment. I echo the sentiments of my colleague from the south, Mr. Piro.

The murder conviction of a woman named Anita Rohr was overturned on appeal last year. The facts of this case are troubling. Ms. Rohr is developmentally disabled, an adult but a vulnerable adult. She had been the victim of sexual and domestic violence her entire life. She had limited schooling and was living unhoused by the railroad tracks in Reno. She was accused of murdering another unhoused person, though there was no DNA evidence or witnesses. All authorities had was a confession from Ms. Rohr following an initial nine-hour interrogation when she maintained her innocence.

During a five-hour interrogation when she continued to maintain her innocence, officers falsely asserted the entire incident was on camera, Ms. Rohr's DNA was on the victim's body, the victim's hair was found on Ms. Rohr's hands and her codefendant had had sex with the body. None of this was true. After those lies were fed to her and after an initial nine-hour interrogation and a subsequent five-hour interrogation, she made a false confession. That case has been overturned on appeal. She is still in custody and is going back to trial.

These things matter. I am going to be frank—I can hear whispering behind me. The Washoe County District Attorney and I are going to disagree on how horrendous the facts of that case are. The case file speaks for itself. These lies happen, though I personally have more faith in police officers. They are capable of doing their jobs. I know the police officers sitting next to me are capable of investigating a murder, solving crimes and keeping this community safe without lying. We most especially should not be lying to vulnerable people or children.

CHRISTOPHER RIES (Las Vegas Metropolitan Police Department):
We support the amended version of A.B. 193. We share many of the concerns with Ms. Noble. We believe that the amendment is the best version of the bill that we can get. To be clear, we are unaware of deceptive interrogation tactics being an issue in Nevada. Also, the confession is only one part of an investigation. We look at several factors and use a variety of interrogation

techniques. Statements need to be voluntary and uncoerced. This bill protects those rights.

LILITH BARAN (American Civil Liberties Union of Nevada):
We agree with my colleagues from the public defenders' offices. We support A.B. 193 without the amendment.

GREG HERRERA (Nevada Sheriffs' and Chiefs' Association):
We support A.B. 193 with the amendment as proposed by the Nevada District Attorneys Association.

JASON WALKER (Washoe County Sheriff's Office):
We support A.B. 193 with the amendment. The goal of any juvenile interrogation should always be to obtain voluntary truthful statements corroborated by evidence and case facts.

QUENTIN SAVWOIR (President, NAACP Las Vegas):
We agree with our public defenders and support A.B. 193 without the amendment.

DASHUN JACKSON (Children's Advocacy Alliance):
We support A.B. 193 without the amendment. We believe in protecting the rights of children and giving them a fair chance. It is important that we stop deception during juvenile interrogation. It is time for Nevada to take a stand and protect the rights of our young children. As mentioned, the data has demonstrated the negative impacts that lying during an interrogation has on the lives of our children. It is crucial that we protect the overall process and maintain the integrity of interrogations.

KATIE BANUELOS (Libertarian Party of Nevada):
We support A.B. 193 without the amendment. As a matter of basic integrity, police officers should be held to the highest standards of conduct. Under no situation is it acceptable to lie and deceive a child. Furthermore, they should not be lying or deceiving anyone. We encourage lawmakers to extend these protections to all people, not just to minors, but it is especially important when it comes to minors. Presumption of innocence is the most basic foundation of the justice system.

JAGADA CHAMBERS:
I am a Clark County School District father. I want to urge the Committee on Judiciary to support A.B. 193 without the amendment.

We want to eliminate this practice. It happens all the time, especially in Clark County. I engage with many people in the community and see the gulf between the public and the authorities. The law enforcement community says it is a practice only used in murder cases. That is disingenuous.

YESENIA MOYA:
I support A.B. 193 without the amendment. I disagree with the amendment because the truth is, as a community member and somebody who has family and friends who have been incarcerated, I know for a fact police lie. They do so in various ways. For example, my friend was told in his initial eight-hour interrogation the authorities could give him probation if he confessed. I have heard these stories from people with personal experience. As somebody who grew up in this community, I have seen how lives are changed by police lies. Our justice system has no room of any type of deception.

JESSICA ORTA:
I support A.B. 193 without the amendment. We are supposed to be able to trust police officers, but I do not. Legislation allowing deception practices with our children does not increase public trust. A presenter said the amendment was made with good intentions, but I would like to remind you all that the road to Hell is paved with good intentions. The Committee needs to think about the language being used and be sure your intention reflects the way that it is applied in public.

LESLIE TURNER:
I support A.B. 193 without the amendment. We should not be setting a precedent for police officers to be able to lie to the community, whether it is children or adults. The burdens of upholding the justice system and uplifting integrity is a burden on everybody. Police officers, law enforcement agencies and district attorneys are paid to uphold justice and integrity.

MR. ERB:
I thank the Committee for its discussion and investigation of this issue. I want to thank Ms. Noble and the Nevada District Attorneys Association and law

enforcement throughout the State who work with us on this and many other issues. Though we do not always agree, it is a respectful process.

I want to provide responses to some questions. I concur with the view that the Supreme Court does set a floor in these issues. The Supreme Court cases date back to the early 1960s and have been reaffirmed in different cases. It is not an assessment that deceptive interrogation is a necessary or viable interrogation tactic. It is simply the due process clause alone does not rule out deception per se. It says this in the case that deception in some circumstances may not render a confession involuntary, but it has also affirmatively said in many scenarios the court has extreme disfavor of the use of these tactics and explicitly that it is the responsibility of state legislatures to adopt rules regarding the admission of evidence to assess whether a confession is still reliable if deception is used. This bill would adopt that standard.

I want to add to Chair Scheible's insightful assessment of the proposed process throughout the bill. The first step is the need for the defense to prove that a lie occurred, the lie was made knowingly, the lie was material and the lie was reasonably likely to elicit an incriminating response. It does create a presumption of inadmissibility, but it is just a presumption of inadmissibility. It is not automatically excluded at that point. The State then only has to demonstrate by preponderance of the evidence, which is the existing standard, that it is voluntary, and that the lie did not cause or induce that person to make the statement. It would still allow lies in the case that law enforcement feels it is necessary.

We are asking through this bill that if an officer is going to lie, he or she is going against best practice. Officers will have to demonstrate the reasons for their decisions. They would say here is all the evidence that clearly led us to identify the right suspect. Here is where all the statements made by the suspect came from. Law enforcement did not provide all the details to suspects for their responses. It is raising the bar ever so slightly by saying the confession should not just be voluntary, but that we can believe the veracity of that confession in the same way that we do for forensic evidence. Whereas other states have raised the standard on clear and convincing evidence, states like Utah and Indiana have ruled it out entirely. This creates a slightly higher step.

I appreciate the suggested amendment. However, the reason we do not support it as currently drafted is the bill brought over from the Assembly includes an

exception for imminent threats to property or life. If there is a provable imminent threat to someone's life through a threat of homicide or attempted homicide or anything that could cause someone bodily harm, would be an exemption under the bill. The way I read the amendment is it is not about an imminent threat. The exemption would apply to any homicide or any attempted homicide. This could include a cold case with no provable imminent threat. From the Innocence Project perspective, those are the cases where we are most concerned. As I mentioned in my opening testimony, the vast majority of false confession cases have been in homicide cases, including three of the four false confessions in Nevada. We would welcome the opportunity to work with Ms. Noble and her team to clarify the exemption is only applicable in the case of imminent threat. The language of the bill already encapsulates this concept, and we should reject carving out any attempted homicide or homicide that has occurred when there is no threat to anyone in the investigation. No state has adopted that carveout.

CHAIR SCHEIBLE:
The L. Douglas Wilder School of Government and Public Affairs, Virginia Commonwealth University submitted a summary brief (Exhibit K) in support of A.B. 193. We have received four letters (Exhibit L) in support of A.B. 193. I will close the hearing on A.B. 193 and open the hearing on A.B. 309.

ASSEMBLY BILL 309 (1st Reprint): Revises various provisions governing common-interest communities and condominium hotels. (BDR 10-960)

ASSEMBLYWOMAN ALEXIS HANSEN (Assembly District No. 32):
If there was ever a good time to present a homeowner's association (HOA) bill, it would be now, after the last bill hearing. The irony is I do not live in an HOA, and I never have, but it does not mean that I do not recognize good business practices and constituent empowerment. Assembly Bill 309 is the result of a constituent request. This bill truly is a win-win that accomplishes a couple of goals. It enfranchises more unit owners and homeowners in community elections, saves money and provides efficiency for associations in their operations. When associations save money, unit owners and homeowners pay less for operational expenses. The bill includes important due process provisions for board members.

GARRETT GORDON (Community Association Institute Nevada):
Assembly Bill 309 will do three things. It will encourage and increase participation in HOA elections, provide cost-saving options to associations and ensure a more efficient and complete transfer of association records. We have seen a national trend allowing for electronic voting in elections which is permitted in 26 states including Oregon, Washington, New York, New Jersey, Florida, Arizona and Texas. The data demonstrates the value of allowing for electronic voting.

Section 1 amends NRS 116.31034 to provide that HOA elections may be allowed an option of electronic balloting. Because of the NRS 116 requirements for staggered terms, elections are an annual event for HOAs. The statute requires that each association produce mail and hand-counted paper ballots. It is an expensive process as each ballot requires three envelopes of different sizes, a paper ballot, a page of required disclosures and position statements for each candidate.

This must all be assembled and mailed through the U.S. Postal Service. Ballots must be returned to the association within 15 days. The outer return envelopes are validated to ensure that the envelope can be matched to a unit and a unit owner. Return envelopes are opened at the annual meeting of the members and paper ballots are hand counted by volunteers.

Typically, once all the ballots have been separated from the two envelopes in which they arrive, one volunteer will read out loud the vote while another marks votes on a piece of paper. Obviously, this is a laborious process, and despite everyone's best efforts at hand counting, the process is frequently inaccurate. The results are announced, and the new board is seated.

Assembly Bill 309 will provide associations with an electronic voting option. It is not mandatory. It provides authority to associations to choose voting methods. They can contract with an independent third-party provider or use a voting machine like those used in state elections. If an association chooses the electronic balloting option, property owners retain the right to vote by paper ballot. It is a rare HOA election when 50 percent of the owners vote. Before NRS 116, owners had to attend the annual meeting in person or by proxy to be nominated for a seat on the board and to vote. Participation was generally abysmal. Secret written ballots were an improvement in both convenience and

democratic participation. Assembly Bill 309 is a step on the path to increasing owner participation in the governance of their communities.

Most people conduct business and communications online. In recognition of this fact, this Committee passed a bill earlier in the Session making email the default method of communication. Section 2 incorporates these secure electronic balloting options in the HOA executive board member removal elections as well. Once homeowners submit a valid petition for the removal of a board member, the executive board is legally required to meet for the purpose of scheduling a meeting for the members to vote, determine the dates on which ballots will be disseminated to homeowners and counted.

The bill adds important options for a board member who is the subject of the recall effort to request a special board meeting to make the case against removal. That meeting must be held before the results of the voting are announced. This additional step of due process was important to the Assembly Committee on Judiciary.

Section 3 sets out the process for in-person and secret ballot votes by homeowners as well as votes by absentee and proxy ballot and ballot request timelines. The statute is specific regarding how such votes are conducted and what type of information proxy and member ballots must contain. Assembly Bill 309 clarifies that elections and removal elections are two types of votes which owners may conduct without a meeting.

The bill specifies the requirement for voting machines' hours and times availability. If an association wants to use the voting machine, it must be approved by the Office of the Secretary of State in accordance with NRS 293B. Once voting begins, voting machines must be available for use between the hours of 8:00 a.m. and 8:00 p.m. for a period of 15 consecutive days and must be located in a prominent place within common areas of the association.

Section 3 specifies that if an association chooses electronic balloting and contracts with a third party, no one shall have access to voting results before they are announced by that third party during a members' meeting. Options for possible third-party vendors are available online. Many companies in Nevada offer this service.

This section also sets forth standards for online voting systems—the ability to authenticate the identity of the homeowner; ensure votes remain secret and are not altered in transit; provide each owner an electronic receipt; store votes for inspection by ombudsmen and homeowners; count all lawful votes; and reject those that are duplicative or not cast by the homeowner.

Section 5 extends an association's ability to make automatic payments for routine expenditures such as insurance, Internet access and telephone service fees. Existing statutes only allow an association to schedule its utility payments for automatic payment. Section 6 amends NRS to require the Commission for Common-Interest Communities and Condominium Hotels to adopt regulations establishing standards for management companies' transfer of books. Sections 8 through 11 specify the same changes relate to condominiums and hotels under NRS 116.

Data collected across the Country demonstrates an increase in member participation with the use of electronic voting, and the systems save money for all involved. Assembly Bill 309 passed unanimously out of the Assembly. We respectfully ask the Committee approve this bill.

SENATOR HANSEN:
As former Assemblywoman Maggie Carlton was fond of saying, do not let the perfect stand in the way of the good, but everything about this bill is perfect.

CHAIR SCHEIBLE:
In your presentation, you mentioned an amendment. Is that the amendment that was adopted in the Assembly?

MR. GORDON:
Yes.

CHAIR SCHEIBLE:
I will close the hearing on A.B. 309 and open the hearing on A.B. 454.

ASSEMBLY BILL 454: Revises provisions relating to legal services for indigent defendants. (BDR 14-1067)

MARCIE RYBA (Executive Director, Nevada Department of Indigent Defense Services):
We work with rural counties to provide resources for public defenders and develop plans for the provision of indigent defense services to help counties comply with minimum standards.

Understanding compliance with minimum standards requires additional funding, and the Legislature allowed the Board on Indigent Defense Services to create a maximum contribution formula for Nevada counties.

Assembly Bill 454 clarifies funds should be appropriated in the Department of Indigent Defense Services' budget so we can reimburse counties pursuant to the maximum contribution formula. It also provides that if those funds are exhausted, the Department can seek an allocation from the statutory contingency account so that we can reimburse those rural counties if the amount initially appropriated was not sufficient to make them whole.

The bill allows the Board to adopt hourly rate regulations for appointed counsel in rural counties. Generally, once counsel is appointed to a case, it goes straight to the public defender's office. If the public defender has a conflict, many counties need appointed counsel to step in and act as the public defender. This rate set by statute has not been increased since 2003. The Board is requesting authority to set an appropriate hourly rate for both indigent defense and postconviction cases.

VINSON GUTHREAU (Executive Director, Nevada Association of Counties):
We appreciate the statutory mechanism to provide reimbursements for costs above the maximum contribution. We support A.B. 454.

Remainder of page intentionally left blank; signature page to follow.

CHAIR SCHEIBLE:
I will close the hearing on A.B. 454. I will adjourn the hearing at 3:15 p.m.

RESPECTFULLY SUBMITTED:

Jan Brase,
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. 126	C	2	Patrick Guinan	Work Session Document
A.B. 159	D	2	Patrick Guinan	Work Session Document
A.B. 227	E	2	Patrick Guinan	Work Session Document
A.B. 75	F	3	Patrick Guinan	Work Session Document
A.B. 356	G	4	Patrick Guinan	Work Session Document
A.B. 371	H	5	Patrick Guinan	Work Session Document
A.B. 373	I	7	Patrick Guinan	Work Session Document
A.B. 193	J	14	Nevada District Attorneys Association	Proposed Amendment
A.B. 193	K	33	Senator Melanie Scheible	Summary Brief
A.B. 193	L	33	Senator Melanie Scheible	Four letters of support