MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-second Session
April 11, 2023

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 12:03 p.m. on Tuesday, April 11, 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:

Senator Robin Titus, Senatorial District No. 17
Assemblyman Toby Yurek, Assembly District No. 19

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Paula Montanucci
Mark Jackson, District Attorney, Douglas County
Kirk Widmar, Chief, Offender Management Division, Nevada Department of Corrections

Jennifer Noble, Nevada District Attorneys Association
Christopher Ries, Las Vegas Metropolitan Police Department
Jason Walker, Washoe County Sheriff's Office
Brennan White, Mothers Against Drunk Driving, Southern Nevada Affiliate
Greg Herrera, Nevada Sheriffs' and Chiefs' Association
Jason Patchett
Erin Breen, Director, Road Equity Alliance Project, Transportation Research Center, College of Engineering, University of Nevada, Las Vegas
Deborah Kuhls, Professor of Surgery, Kirk Kerkorian School of Medicine, University of Nevada, Las Vegas
John T. Jones, Jr., Nevada District Attorneys Association
Jason Walker, Washoe County Sheriff's Office
Elyse Monroy-Marsala, Nevada Public Health Association
Jeff Rogan, Clark County
Zach Bucher, City of Las Vegas
Vanessa, Unidentified Testifier
Adam Clarkson, Chair, CAI Nevada
Samantha Sato, Nevada Association of Community Managers
Gregory Kerr, CAI Nevada
Anne Calarco
Laurie Berger
Valerie Santana
Rhonda Tyson
Robert Allen Forney, President, Complex Solutions
Michael Kosor
Samuel Covelli
Howard McCarley
Sharath Chandra, Administrator, Real Estate Division, Nevada Department of Business and Industry
Annemarie Grant

CHAIR SCHEIBLE:
We will open the work session.

PATRICK GUINAN (Policy Analyst):
I will read the summary of Senate Bill (S.B.) 171 from the work session document (Exhibit C). The bill prohibits a person from purchasing, owning or having possession or custody of a firearm who has been convicted in the immediately preceding ten years of committing or attempting to commit an

offense that is a gross misdemeanor constituting a hate crime under State, federal, other state, territory or district law that prohibits the same or similar conduct.

SENATE BILL 171: Revises provisions governing firearms. (BDR 15-649)

The same prohibitions on firearms apply if the person has been convicted of committing or attempted to commit certain violent offenses that constitute a hate crime. The provisions of the bill do not apply to a person who was convicted of any of these offenses prior to July 1, 2023. There is no amendment.

SENATOR OHRENSCHALL MOVED TO DO PASS S.B. 171.

SENATOR NGUYEN SECONDED THE MOTION.

SENATOR HANSEN:
I will vote no on S.B. 171. A gross misdemeanor is too low a standard to take away somebody's constitutional right. If the same criminal act was a felony, it would automatically merit a suspension. I am also concerned about the ten-year window for a gross misdemeanor and lack of uniform application. When it comes to hate crimes, there is a vagueness in *Nevada Revised Statutes* (NRS), and the law is not applied uniformly to different bodies of people. This is a mistake.

As the Committee knows, I have been against the whole hate crime concept for a long time for the very reasons embodied by S.B. 171. To lower the bar to a gross misdemeanor is wrong. In domestic violence situations, that is the case; while I am honestly concerned about that, there is not a ten-year window for that crime either. When you lower the bar that far on a constitutional right, you are crossing a line. If we are so concerned about these types of things, we should make the punishment a felony, not just a gross misdemeanor.

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

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MR. GUINAN:
Senate Bill 174 removes from statute an exemption allowing a community manager in a common-interest community to collect debts or contract with a collection agency to collect debts included in an association's lien without being licensed as a collection agency.

SENATE BILL 174: Revises provisions governing common-interest communities. (BDR 10-610)

An amendment in the work session document (Exhibit D) proposed by sponsor Senator Scott Hammond would allow an association manager to process all precollection and courtesy notices, intent to liens and other mailings prior to a notice of delinquent assessment being processed.

SENATOR NGUYEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 174.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR DONDERO LOOP VOTED NO.)

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MR. GUINAN:
Senate Bill 362 requires if a person who is in the custody of a peace officer indicate that he or she cannot breathe, the peace officer must ensure medical aid is rendered to the person by an appropriate medical practitioner as soon as practicable.

SENATE BILL 362: Revises provisions relating to public safety. (BDR 15-289)

The bill provides the Nevada Department of Motor Vehicles (DMV) may adopt regulations governing the use of a single symbol on a driver's license to indicate a person may have a certain medical condition or conditions and to maintain a record of such that will be accessible to law enforcement agencies. The DMV must also make information available on its website regarding how a person may obtain a license with such a symbol. The bill prohibits a peace officer from performing or causing to be performed while on duty any copyrighted work.

An amendment in the work session document (Exhibit E) revises provisions regarding the prohibition on an officer using copyrighted work to require law enforcement agencies to adopt policies preventing officers from weaponizing copyrighted work to interfere with the sharing of recordings made of officers on duty.

SENATOR NGUYEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 362.

SENATOR OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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MR. GUINAN:
I will read the summary of Senate Bill 378 from the work session document (Exhibit F). The bill revises provisions concerning which documents a common-interest community association with 150 or more units must make available on its website.

SENATE BILL 378: Revises provisions relating to common-interest communities. (BDR 10-1059)

The bill removes the requirement such an association must make it possible for a unit owner to pay assessments electronically. It provides instead an association may allow payments to be made electronically if certain conditions are met. It eliminates provisions requiring certain notices be delivered by mail, providing instead they be sent by email in most circumstances. The bill also provides how notices must be delivered when email is not used. The bill authorizes an association to purchase a unit at a foreclosure sale by a credit bid up to the amount of any unpaid assessments plus any permanent fees and expenses incident to the enforcement of the association's lien. There is no amendment.

SENATOR OHRENSCHALL MOVED TO DO PASS S.B. 378.

SENATOR NGUYEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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MR. GUINAN:
Senate Bill 395 provides the Securities Division of the Office of the Secretary of State will create and maintain a registry of corporations and limited liability companies that purchase or own residential property in the State and to make the registry available online.

SENATE BILL 395: Revises provisions relating to real property. (BDR 10-288)

Business entities are required to register with the Division before purchasing residential real property; the Division may charge a fee for such. A county clerk may not record any deed concerning the purchase of such property unless the deed contains information about the ownership of the entity. The deed must make clear the property is not the owner's primary residence.

An amendment in the work session document (Exhibit G) excludes family trusts and Nevada Housing Authority transactions from the bill. It adds language to protect against aggregate purchases and limits investor purchases to 1,000 per year. It excludes transactions wherein the sell and construction dates are the same. It replaces "clerk" with "recorder" where appropriate and requires a recorder to make sure the filing name matches the name registered with the Secretary of State. The amendment mandates the form filed with the Secretary of State accompany the deed recording, regardless of whether the transaction is in cash. The bill is in skeleton form.

SENATOR NGUYEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 395.

SENATOR OHRENSCHALL SECONDED THE MOTION.

SENATOR STONE:
I will vote no on S.B. 395 but reserve the right to switch my vote on the Senate Floor.

THE MOTION PASSED. (SENATOR STONE VOTED NO.)

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CHAIR SCHEIBLE:
We will close the work session and open the hearing on S.B. 284.

SENATE BILL 284: Revises provisions relating to driving or operating certain vehicles or vessels while under the influence of alcohol or a controlled substance. (BDR 16-940)

SENATOR ROBIN TITUS (Senatorial District No. 17):
Senate Bill 284 revises provisions relating to the assignment of certain offenders to an institution or facility of minimum security, The bill amends NRS 209 and NRS 484C, which relate to the sentencing of persons imprisoned for DUI of a controlled substance or intoxicating liquor.

The law states a person so imprisoned must, insofar as practicable, be segregated from offenders whose crimes were violent and instead be assigned to an institution or facility of minimum security. The provision covers offenders who drove while impaired, regardless of whether it is a third offense. If a reckless driver kills someone, he or she can be charged with manslaughter and go directly to prison. However, the laws for a DUI third offense involving manslaughter or death are not the same.

In fall of 2022, my constituent Paula Montanucci reached out to me regarding these laws. As has happened to way too many folks, her life was drastically changed due to a drunken driver.

PAULA MONTANUCCI:
I am the mother of Fallon Taylor Montanucci and Avalon Marie Montanucci, who were victims of a drunken driver in April 2022 in Minden. I lost a treasured individual and airman first class. You can imagine losing my 22-year-old daughter Fallon in the most unbelievable, violent and heinous way is too much for me to bear—not to mention how my family is still dealing with the impairment of my youngest daughter, Avalon, due to irreversible physical and mental damage.

My girls were taught to love and cherish each other above all. This came naturally to Avalon as she was always the softer of the two. Fallon was her perfect match with strong energy and a protective nature. That came tragically into play in her final moments when she turned the wheel to take the full force

of the truck coming at them at more than 100 mph on the wrong side of the road.

When one of the girls was sick, the other would calmly take the position as a mother when it came to signing absentee permission slips; the same was true for learning how to drive. I remember all the plans they made together; often I would hear their dinner conversations about growing up together and having families of their own.

My daughters were beloved by their teachers. They excelled in everything they did, especially school, always bringing home the best grades. They were involved in the community from a young age in stock programs and programs aimed at educating the youth of Douglas County in the fight against drugs and violent crimes. Avalon started an antibullying campaign in sixth grade.

Fallon was interested in sports in elementary school. She was on an elite jump-roping team to raise funds to fight heart disease. My little girls were so involved in the community, making a difference to their peers because of the foundation my husband and I gave them and the community they grew up in.

Fallon was shy but began to find her confidence by keeping busy training and running on her own. She participated in volleyball, track and other sports. After high school, Fallon continued to work hard at a day care center full time while she went to college full time.

After graduating with her associate's degree, she joined the air force. She was perfect for a life of service: she was regimented and had that Nevada girl grit. Fallon was stationed at Malmstrom Air Force Base in Great Falls, Montana. She continued her education while in service, majoring in psychology. She was only two weeks away from finishing her bachelor's degree before the collision; Avalon was only two weeks away from finishing her associate's degree. Fallon planned on continuing with a master's degree.

Fallon practiced her passion for helping others at the local middle school in Montana by preparing seventh- and eighth-grade students for a statewide science competition. She did not have the opportunity to see her kids win first place in the competition after she had worked months to help them.

We tried to get Fallon home from Montana. It must have taken four months, and it was one thing or another: flights were delayed, the weather was bad, it was this, it was that. Finally, right before Easter 2022, we were able to get her home. If any of you have children or grandchildren, you know that point at which kids get when they are ready to launch. Everything we as parents had done, everything the kids had gathered since they were born coalesced to Fallon saying to me, "I want to be just like you" when she grew up. I had the opportunity to tell her she was amazing. She was ready to take the next step, and we were all excited to see what that was.

The night of Saturday, April 23, the girls were driving home from a friend's house. They were seven minutes—just seven minutes—away from home. You know how in the movies you see the officers pull up to the kid's house? Well, six officers pulled up to my house that morning. My daughters were out, and I told myself, "God, please just let them be in trouble." I knew they could not be in trouble because I know the kind of girls I raised, so knew it was something more.

I knew the sergeant who came to my door; I grew up with him. I knew that look on his face. I did not see my girls anywhere so had to ask, "Where are my daughters? Which one? Fallon? How do I get to Avalon?" He essentially said, "Sorry, ma'am. You can't take Highway 395 because they are still cleaning up your other daughter off the highway. So, you'll have to take the long way through Genoa to go get your daughter." The other daughter had been Care Flighted to Renown Medical Center.

I took my sick husband with me who just had a five-artery heart bypass operation and has metastasized prostate cancer. I got us to Reno and were told, "Ma'am, the only thing that we can tell you is that she knows her birthday and she knows how old she is." I saw my little girl who did not even look like her. The injuries were multiple.

At the accident site, responders did not even know Avalon was in the car because my daughters were hit head-on by a Ford F-150 full of concrete material by a man who did not even know which way was up. He was going more than 102 mph. He hit my little girls head-on in their Hyundai Accent going 52 mph with not an ounce of alcohol in its driver, Fallon. She did everything right.

There was nothing left of that car; they did not even know Avalon was in it until they heard her and extracted her to Care Flight to Renown. I got to the intensive care unit in just enough time to see the surgeon ascertain what condition my daughter was in. Thankfully, she is sitting here with me today. It has been a journey, people, that just does not end. I know my daughter is not going to come back.

I am here today because when the perpetrator's sentencing happened, justice was not done for my daughters in the Douglas County courts. As soon as the case hit some sort of system, it went wrong. The man who hit my daughters was sent to an honor camp. I was under the impression he was going to Carson City to be evaluated to find out which prison he was going to. It turns out he went to another honor camp in Carlin, God's country, where he is right now probably cleaning up sagebrush to burn for the fire season.

That man is out there enjoying himself. My daughter loved life. She did not find it too hard to live every day and drink her problems away. She knew how to get help if she needed it. She is lying six feet under now. My daughter will not have a sister with whom she gets to grow up and have babies. Everything they planned is gone.

Our lives have changed, and I ask myself, have DUI laws been diminished these last five to seven years? Is it just that change is not happening fast enough? Are we not talking enough about DUI penalties? I want people driving through Nevada to be scared if a police officer rolls up behind them when they are doing something wrong. These are our children who are getting killed; these are parents who are getting killed. These are innocent people doing everything right.

I need a little justice from the system today. I need to see a little justice for the families who do not see it, who do not have a voice like mine or the support I have beside me and from an entire community. I will fight for my daughters because they deserve it. It would be a shame if I did not see justice for Fallon today.

SENATOR TITUS:
I need to clarify the issue here is the DUI driver was sentenced and went immediately to a work camp; he never saw a day in prison. That is what we are hoping to fix.

MARK JACKSON (District Attorney, Douglas County):
I will present additional context regarding the Montanucci case. The driver of the vehicle in the collision that killed Fallon and seriously injured her sister, Avalon, went through a series of three blood draws in accordance with the law. His blood alcohol levels were point 0.217, 0.206 and 0.197.

This was not his first offense. The sentencing judge was aware his first DUI conviction in Douglas County in 2013 stemmed from drinking, driving and crashing his vehicle into a fence along the roadway. Property damage was added to the DUI charge.

The man's second DUI arrest was two-and-a-half years later in Carson City. He was convicted in 2016; the offense involved driving a vehicle into a stop sign power box, which caused a loss of power to residents in the area. He was also arrested in 2016 for being intoxicated and discharging a firearm within the Carson City city limits. At the time of that offense, he had a pending criminal citation for driving in a dangerous manner. He was also a suspect in a battery case. His blood alcohol level was 0.251 then, but the victim did not want to cooperate.

In the prosecution of the Montanucci matter, the man was sentenced on October 17, 2022, after being charged with violations of NRS 484C.430. Count one was causing the death of Fallon Montanucci. Count two was DUI causing substantial bodily harm to Avalon Montanucci. The maximum punishment for each of those offenses was 20 years in prison; the maximum minimum parole eligibility was 8 years. The sentencing judge gave the offender to 8 to 20 years on Count one and 8 to 20 years on Count two. The aggregate sentence was 16 to 40 years.

The prisoner was transported to and received by the Northern Nevada Correctional Center on October 19, 2022. Less than 30 days later, on November 17, he was initially assigned to the work crew at Stewart Conservation Camp in Carson City.

It is the position of the Montanuccis and the Douglas County District Attorney's Office that punitive and rehabilitative justice was not served in the case.

Section 1 of S.B. 284 makes clear NRS 209.481 governs the DOC. The NRS sets forth the powers and duties of the Board of State Prison Commissioners,

including prescribing regulations for conducting the business of the Board. The duties of the DOC Director include establishing regulations—with the approval of the Board—and enforcing laws governing the administration of the DOC and the custody, care and training of offenders.

One of the approved regulations specifies the custody categories and the criteria within DOC institutions and facilities. Nevada Department of Corrections Administrative Regulation 521 sets forth those classifications. They include maximum custody, close custody, medium custody, high custody, minimum custody and community trustee, which is through transitional housing.

Minimum custody institutions lack secure perimeters. They include work camps and transition centers. A criterium that must be met for any offender assigned to a minimum custody facility is he or she must be within 48 months of possible release from custody, as per DOC Administrative Regulation 521.05.

The DOC assignment to minimum security facilities has exceptions, as set forth in section 2 of S.B. 284. All seven are for felony DUI or operating a vessel under the influence of alcohol or controlled substances in subsection 1, paragraph (a) of NRS 209.481. *Nevada Revised Statutes* 484C.400 sets forth the penalties for DUI of intoxicating liquor or controlled substances. A third-offense DUI penalty for that statute is addressed in section 2, subsection 1, paragraph (c) of S.B. 284.

In section 3, NRS 484C.410 sets the penalty for DUI after an offender has been convicted of felonious conduct or homicide. In section 4, NRS 484C.430 sets the penalty for DUI causing death or substantial bodily harm. In section 5, NRS 484C.440 sets the penalty for vehicular homicide.

Of the seven felonies listed in section 2 of the bill, six are Category B felonies, including vehicular homicide. In section 6, NRS 488.420 stipulates the penalty for operating a vessel causing death or substantial bodily harm. In section 8, NRS 488.425 sets the penalty for homicide by vessel. In section 8, NRS 488.427 states the penalty for second or subsequent felony operation of a vessel under the influence of intoxicating liquor or a controlled substance.

Sections 2 through 8 of the bill remove the mandate a prisoner be immediately assigned to a minimum custody facility if he or she is convicted of one or more of the seven enumerated felonies in section 2. The bill would revise penalties for

those felonies by treating the classification and custody category for offenders the same as for other offenders with respect to eligibility for assignment to an institution or facility of minimum security if they meet the criteria set forth in the DOC Administrative Regulations.

If a person is convicted of a third DUI offense, it is a Category B felony, and he or she is sentenced up to six years in prison. From Day 1, the person is going to be within four years of release and still be eligible to be sent to a minimum custody facility.

It is the other six felonies dealing with causing death or substantial bodily harm, vehicular homicide, previous felonies and those types of offenses whereby the person could be punished up to 20 years. Senator Titus gave the example about reckless driving. Another example is a person involved in a collision who left the scene is subject to the same penalties as a DUI resulting in death or substantial harm.

Most people would agree the latter situation is more egregious than just leaving the scene, as offensive as that is. However, the offender who was involved in a collision and left the scene would not be eligible for a minimum custody facility until within 48 months of release.

SENATOR TITUS:
There are about 200 DUI offenders sentenced annually in Nevada. We now have 280 people in DOC facilities for DUI; of them, 22 offenders would no longer be allowed to be in a minimal custody under S.B. 284.

SENATOR NGUYEN:
Some of these penalty laws have only been in effect for about 50 years. The minimum versus maximum security distinctions were established after the Fifty-ninth Session; the DUI provisions were entered after the Sixty-second Session. Have we seen a progression in this? How many people are put in honor camps as opposed to facilities for other custody levels?

The DOC has a classification system when people enter its system. There are regulations promulgated to put offenders in the best situation where they will be safe. However, inmates are also incarcerated in unsafe areas. Would the bill change any of that? I assume because DOC came up with the regulations, it thought safety and rehabilitation should be taken into consideration. What kind

of conversations have you had with DOC about its processes for classifying people?

MR. JACKSON:
Kirk Widmar, Chief of the Offender Management Division, and other individuals from DOC came to Douglas County and made a presentation to our prosecutors, judges and defense bar about the prison math specific to these issues.

SENATOR NGUYEN:
I read sometimes people who have been convicted of other felony charges will also be charged with DUI resulting in death or substantial bodily harm. Are they still eligible for diversion into something like a work camp, or are they placed in the general prison population?

KIRK WIDMAR (Chief, Offender Management Division, Nevada Department of Corrections):
Senator Titus said we average about 200 new DUI admits per year. It is the most serious offense in the category if offenders have multiple other charges. That is the exception carved out specific to those charges. Offenders with traditionally longer minimum and maximum sentences may go to camps under statute but not offenders committing a different crime outside of the scope of 48 months from release.

When DOC reviews offenders upon intake, we look at their criminal histories and prior incarcerations. Ultimately, the judge drives the whole ship. What type of felony charges are in the sentence and what other mitigating or aggravating factors are involved? We also look at the presentence investigation used through the hearing process.

When we are simply dealing with a DUI sentence, DOC is held to the standard law dealing with that. Those offenders are allowed to go to minimum custody in any of those categories; the sole exception is if there is another charge involved, whether concurrent or consecutive. That requires us to consider the second felony; plus, the 48 months to possible release comes into play.

The DOC has 280 offenders in minimum custody sentenced under DUI. Twenty-two of them would fall outside of minimum eligibility for work camps if S.B. 284 is passed as written. They will have to wait to the 48-month release window to be considered for minimum custody.

SENATOR NGUYEN:
If a reckless driver causes a death, he or she will be populated in a typical prison setting. If you have a DUI with death, are you diverted into a camp situation? Is a third DUI offense like a Class B felony with a one-to-six-year sentence? Are those offenders diverted into camps, or do they serve their time in prison? Is the bill only limited to DUI death or substantial bodily harm?

MR. WIDMAR:
No, someone with a third DUI and one-to-six-year sentence would become immediately eligible for work camp under current statute if he or she was within 48 months of release.

SENATOR NGUYEN:
Can an offender go to a camp with a DUI third but not be automatically diverted if it is a DUI causing death? Let us say you are sentenced to 28 to 72 months, the maximum penalty for that offense. Are you automatically eligible for an honor camp if it is not within that four-year window?

MR. WIDMAR:
If a person is only convicted of any of the DUI offenses, the outcome is the same and minimum security is assigned.

JENNIFER NOBLE (Nevada District Attorneys Association):
The Nevada District Attorneys Association supports S.B. 284.

CHRISTOPHER RIES (Las Vegas Metropolitan Police Department):
The Las Vegas Metropolitan Police Department supports S.B. 284.

JASON WALKER (Washoe County Sheriff's Office):
The Washoe County Sheriff's Office supports S.B. 284.

BRENNAN WHITE (Mothers Against Drunk Driving, Southern Nevada Affiliate):
I will read a support letter (Exhibit H) for S.B. 284 from our national and State offices:

> Mothers Against Drunk Driving (MADD) supports SB 284. This legislation will help to ensure that impaired drivers serve their time in a state prison as opposed to a low-security facility such as an honor camp or work camp. Sending convicted impaired drivers to a

low-security facility or work camp sends a dangerous message to the community that choosing to drive impaired and killing someone isn't a violent crime, and also robs families of the sense of justice that can come with knowing offenders are serving their sentences in prison. The fact remains that every time someone makes the choice to get behind the wheel of a vehicle impaired, the danger and potential result is the same—loss of life.

The problem of drunk driving is not going away in Nevada. According to the National Highway Traffic Safety Administration (NHTSA), 83 people were killed in drunk driving crashes in Nevada in 2020 representing 26% of all traffic crashes.

Drunk and drug-impaired driving is a 100% preventable violent crime that requires consequences to ensure the impaired driving law has teeth but also for justice to victims. SB 284 will ensure that impaired drivers who kill a victim will serve their time behind bars. For many victims that MADD serves, this requirement is imperative to help ensure justice. SB 284 still retains discretion to allow the state correctional facility director to place an offender in a low-level facility depending on certain criteria and circumstances. MADD urges you to support SB 284.

GREG HERRERA (Nevada Sheriffs' and Chiefs' Association):
The Nevada Sheriffs' and Chiefs' Association supports S.B. 284.

CHAIR SCHEIBLE:
We will close the hearing on S.B. 284 and open the hearing on S.B. 322.

SENATE BILL 322: Revises provisions relating to reckless driving. (BDR 43-934)

SENATOR JEFF STONE (Senatorial District No. 20):
We hear from time to time that what we experience and witness in our present lives often drives our desire to author legislation. My first email as a newly elected Senator for District 20 came one evening while I was watching television with my wife, Regina. The email was from Henderson resident Jason Patchett. As I started reading it, I was extremely moved by the content of an email from a grieving father.

I stopped what I was doing and immediately called Jason. I heard the horrific details of the terrible incident that resulted in the loss of his beloved son Rex. Jason informed me the perpetrator was a 20-year-old man who was soon going to be sentenced for the crime.

The range of punishment under law is one to six years in prison for exhibition of speed and taking the life of another. Jason argued the punishment did not match the crime and the law needed to be changed. Assemblyman Toby Yurek shares my District and was also contacted by Jason. We all reached the same conclusion: we need to ensure Rex's life will be remembered not only by his loving family but for other kids who could be killed under similar circumstances.

JASON PATCHETT:
My wife, Samantha, son Luke and daughter, Bella, are here with me; I speak on their behalf as well. I stand before you as a father of a child violently killed by a reckless driver 13 months ago. I speak as a victim of reckless driving.

Words cannot begin to adequately describe the horror my family and I are plagued with day in and day out. We have forever been deeply and painfully hurt by the senseless killing of our precious son and brother Rex. It has completely uprooted our lives in unimaginable ways.

Our plea is you see within your hearts to fully consider why S.B. 322 matters to your constituents and all Nevadans, especially the children of our great State. Justice requires holding those who commit heinous criminal acts within our community accountable for their atrocities, especially when the victims of these crimes are children. It is time to send a strong, effective message to those who decide to wreak mayhem on our roadways and drive criminally reckless.

It seems each time you turn on the news, there is another report of an innocent pedestrian senselessly killed at the hands of someone behind the wheel of a vehicle. Vehicle violence in our community is sadly an epidemic and frankly disgusting. This egregious and criminal behavior must not be tolerated. Handing down stronger sentences to criminals will, first and foremost, bring some sense of justice for the victims and their families, friends and community members. We will also send a strong, clear message Nevadans have zero tolerance for vehicle violence perpetrated on our roadways, especially within our neighborhoods and around our children's schools.

On March 7, 2022, our 13-year-old son Rex Patchett was violently struck and killed by a reckless driver while on the sidewalk in front of his middle school. In the days following his senseless killing, we learned of the egregious facts and circumstances surrounding the events of March 7 that have occupied our minds daily, terrorize us each second of our lives and have shaken us to the core.

Around 5 p.m. on March 7, a 21-year-old driver—whom I will refer to as the defendant—was driving his black 2006 Ford Mustang sports car with three adult passengers. The man was observed by bystanders driving recklessly along the roadway in front of Mannion Middle School in Henderson for several minutes prior to the collision.

One bystander stated he witnessed the Mustang enter the roundabout between the middle and elementary schools at a high rate of speed. The driver did a full 360-degree turn while fishtailing around the roundabout, almost struck the bystander and another car in the area and then proceeded west on Paradise Hills Drive at a high rate of speed, continuing to swerve and fishtail.

Seconds before Rex was killed, the defendant began driving at excessive speed east on Paradise Hill Drive in the No. 1 travel lane directly toward a well-known and significant bump in the roadway that provides reckless thrill seekers the opportunity to jump vehicles into the air.

Once the defendant's car struck the bump, he lost control, struck the curb, rotated approximately 90 degrees counterclockwise and then slid along the curb onto the sidewalk. He violently struck Rex, causing him to become airborne and land in the landscape area of the school, where he succumbed to his injuries.

Police determined that upon losing control of his vehicle, the defendant was driving at an approximate speed of 97.42 mph—yes, 97.42 mph—in front of the middle school and near the elementary school when the likelihood of children present on the sidewalk was almost an absolute. The area is an exclusively residential neighborhood with a posted speed limit of 35 mph. So, the defendant was going almost three times the speed limit.

Our feelings and knowledge of these egregious facts and circumstances concerning the horrendous evening on March 7, 2022, haunt us each second of every day. This is our painful reality into which we have been forced with no way to escape. On March 7, my family was sentenced to life in the prison of all

prisons: lifelong pain, grief, fear, uncertainty, loss, anger, sorrow, heartache, despair, hopelessness and complete sadness.

We were given no leniency plea deal, suspended sentence or probation. We were given nothing to save or pardon us from the hellish consequences of the defendant's actions. On March 7, 2022, we were forced through someone else's selfish and criminal choices to suffer our entire lives with the brutally painful reality that our beautiful, precious 13-year-old son and brother Rex is gone, violently killed at the hands of a reckless driver.

The sentence for conviction of reckless driving resulting in death is a minimum of one year to a maximum of six years in prison. The sentence can be suspended or probation may be granted. As a comparison, the sentence for a conviction of DUI resulting in death is a minimum of two years to a maximum of 20 years in prison. The sentence cannot be suspended nor probation granted.

The only difference in most cases that result in DUI death and reckless driving cases that result in death is the element of impairment. If the person who killed my son had been DUI, the penalty would have been substantially harsher.

The choice to drive while impaired must be punished. Nevada law allows for the choice to drive 97 mph in a 35-mph zone in front of a school in a highly residential neighborhood at a time of day where children are present if the driver is 100 percent stone-cold sober and in complete control of one's decision-making and physical abilities.

The taking of a life by reckless driving must be similarly, if not equally, punished as severely as DUI death. However, under Nevada law, the potential sentence of one to six years in prison does not provide adequate justice for such an egregious case of reckless driving. Simply put, the punishment does not match the crime.

If the facts of a reckless driving case are as egregious as I just described do not warrant a prison sentence of more than six years, I cannot for the life of me even begin to imagine—nor would I even want to imagine—a set of facts more egregious or extreme. We need to enable judges with the necessary means to hand down appropriate sentences in cases of felony reckless driving.

Senate Bill 322 does just that. The bill is not going to bring my son back nor will it increase the penalty for the reckless driver who killed my son. So why is my family here today, why am I testifying before you this afternoon? The reason is simple: we are here today because of the way our son and brother Rex Patchett chose to live his 13 years of life.

I will share something my wife and I have learned about our dear sweet boy over the past 13 months since his death. Shortly after his death, a friend contacted me with something his son had shared with him. The boy wrote:

> On Tuesday, the day after Rex's death, I was walking to Mannion Middle School. I noticed that one of my friends who has a disability was crying. When I asked what was wrong, he said only two words to me, "The crash." It immediately hit me: he was one of Rex's many good friends. As we continued to walk into the locker room, I told [the boy] how Rex was an amazing kid. He turned to me and said, "He was my only friend when I came to the school." He then told me how Rex had become one of his best friends he had at the school and how bad he missed him. Anyways, the main idea I am trying to get across is Rex was a great person and a friend who has impacted the lives of many, many people.

A couple of weeks ago, I received a direct message on social media from someone I do not know personally but whose daughter knew Rex. The woman shared with me:

> My oldest daughter was in the same grade as Rex, and she was going through some puberty-related awkwardness in the eighth grade. A ton of the other kids would call her names and make fun of her. Most of those kids were in Rex's circle of friends. But she would tell me how Rex would always jump on them and tell them to leave her alone and that that stuff is not cool. That would always make me smile, knowing someone was helping [my daughter] at school.

Rex lived his life helping those around him, whether it was being a friend to those who needed one or standing up to defend someone because it was the right thing to do. Rex was selfless and truly loved to help other people.

Senate Bill 322 is our family's effort to continue Rex's legacy to help other people. This bill is about mitigating an existential threat that plagues our communities by stiffening the penalties for reckless driving. This bill is about standing up for the countless victims of reckless driving and providing adequate justice for them. This bill is about helping the next family that will unfortunately find themselves in our shoes. This bill is about our family members, friends, neighbors and all Nevadans. Let us continue Rex's legacy and pass S.B. 322.

ERIN BREEN (Director, Road Equity Alliance Project, Transportation Research Center, College of Engineering, University of Nevada, Las Vegas):
I wish I could tell you that Jason Patchett is the first parent I have met whose child was killed by a reckless driver. I wish I could tell you that Jason was the first parent I have worked with whose child died on a sidewalk due to reckless driving, nor would Rex be the second, third or fourth victim I know of.

Speed is the second most common cause of fatal crashes in Nevada, after impairment. I was concerned people here today may feel reckless driving always goes with impaired driving and think S.B. 322 is unnecessary. I will share data for 2018 through 2022, which may be incomplete. The data cited are reckless driving as the primary cause in a fatal crash or one that resulted in life-altering injuries in the field. We use the KABCO scoring scale for death or injury: K, fatal injury; A, incapacitating injury; B, nonincapacitating evident injury; C, possible injury; O, noninjury or property damage only. My figures are from law enforcement and emergency medical service people in the field.

From 2018 to 2022, Nevada had 210 crashes that reached the fatal or incapacitating KABCO level when reckless driving was the top contributing factor. That is a large enough number difficult to visualize, which makes it easier to dismiss. It represents a lot of pain and suffering.

Nevada had 31 such fatal or incapacitating crashes in 2018, 30 in 2019, 44 in 2020, 44 in 2021 and 51 in 2022, which may not be complete. Eighty percent of the crashes were in Clark County, 11 percent were in Washoe County and 9 percent in the rural areas. At-fault drivers between the ages of 21 to 34 were far and away the largest group. All other age groups combined do not add up to the numbers in that group.

Is maturity a factor in reckless driving? Could we do a better job of warning young people of the dangers involved with bad decisions? Because that is what

reckless driving comes down to: bad choices. The answer is always yes, especially when we are talking about males under the age of 30 whose decision-making skills are incomplete.

I looked at the 21- to 34-year-old age group and pulled out those aged 21 to 29 and then the 30- to 34-year-olds. Of those groups, 73 of the drivers were aged 21 to 29 and 33 were aged 30 to 34. The 34-year-old group had about the same accident rate as the 16- to 20-year-old group. That is a four-year increment versus our traditional traffic safety research ten-year block.

Involvement due to crashes because of bad decisions drops dramatically after the age of 34. Consequences for behaviors are a strong deterrent. Teaching early and often that bad decisions behind the wheel result in substantial bodily harm or death that could send you to jail for ten years could stop the average young driver from exhibiting the behavior.

I often say people drive like there are no consequences because there are not. Senate Bill 322 could be the device we are looking for in the toolbox of driver education. In our State, speed is discussed far too often. Even the legal speed limits are too fast for those struck by a vehicle, whether the victim is walking or riding a bicycle. Numbers are higher than they have ever been. Our 2022 bicycle fatalities were triple the worst year we have ever had.

Drivers losing control, leaving the street network and coming onto a sidewalk to strike people walking or waiting at bus stops is far too common. Such incidents have become less high-profile news stories over the last several years, which is disturbing. Just ten days ago, a reckless driver lost control and killed a man waiting at a bus stop. The incident barely made the news at all. It was only reported because it was a hit-and-run crash and authorities were looking for the driver.

The average number of pedestrians killed on the sidewalk in Clark County over the last five years has risen to eight. The Las Vegas Metropolitan Police Department has a team of six officers and a sergeant dedicated to stopping street racing, another form of reckless driving. In the first year of operation, the team wrote 238 citations for reckless driving. Imagine needing a dedicated team of officers for the crime, but that is where we find ourselves at a time when law enforcement is drastically understaffed.

The number of citations written to people traveling more than 100 mph in Nevada has risen from a jaw-dropping 3,517 in 2019 to 4,415 in 2020 and 5,137 in 2021. This morning, I received the 2022 numbers to date, which actually dropped to 4,736. I would attribute that decrease to lack of officers on the street because crashes involving people critically injured or killed due to reckless driving have increased.

How many times have you been driving down the street and wondered about the people who were driving around you? Think about the drivers with whom you interact every day and how many times they have put your life or those whom you love in danger with zero regard for others. We need deterrence for this kind of behavior. Senate Bill 322 could help a great deal in educating especially young male drivers about driving our roads.

DEBORAH KUHLS (Professor of Surgery, Kirk Kerkorian School of Medicine, University of Nevada, Las Vegas):
I have been a trauma surgeon at the University Medical Center (UMC) in Las Vegas for 23 years. The UMC is Nevada's only Level 1 trauma center and only pediatric trauma center. I want to disclose I receive funding from the Nevada Office of Traffic Safety for research.

As a trauma surgeon, I have treated thousands of patients involved in auto versus pedestrian crashes. When I first moved here, I was horrified by the number of adults and children I treated who had been struck by vehicles. I have talked to the patients—most of whom cannot speak—and with their families. It is intuitively obvious that when a pedestrian is hit by a vehicle of any sort, it is with huge force. Pedestrians are at a tremendous risk as vulnerable road users, as we call them, even from vehicles driving at low speeds.

Yesterday, I finished a stint in our trauma intensive care unit. I treated many patients with extremely serious injuries who had been hit by vehicles. Many will never return to productive life; they will be dependent upon others to care for them.

I have witnessed the grief I am sure all of you felt during Mr. Patchett's testimony. I want you to understand those surviving families have grief for the rest of their lives. Those victims who survive have permanent physical and emotional injury; many also suffer depression and post-traumatic stress disorders.

According to physics, 100 percent of pedestrians who survive being hit at nearly 100 mph will die. The injuries Rex sustained were likely bodywide. Certain injuries instantaneously kill someone. From my early days as a trauma surgeon, I was struck by all the injured children we get at UMC. That motivated me to do research, inform policy and prevent injuries. It informed UMC's injury prevention efforts. Some of my first patients were children whose parents thought they were safe. However, they were anything but safe and the survivors' lives were changed forever.

The UMC research also looks at behaviors of drivers. A few days ago, we published our quarterly newsletter called "Trend." It focused on reckless driving, which is pertinent to today's testimony. Seventy percent of reckless driving citations resulted in a crash. Our office recently received information on State citations over a four-year period. There were almost 40,000 citations for reckless, careless and aggressive driving behaviors that caused traffic crashes. As Ms. Breen pointed out, the preponderance of drivers issued speeding citations are younger and male. I thought the researchers who initially put these numbers together had made an error: about 30 percent of the citations involved driving over 80 mph, the maximum speed limit anywhere in the State.

These numbers all represent individual humans. In nearly 23 years in Nevada, I have treated them and talked to their families. I see death and the destruction of human life resulting from irresponsible behavior of drivers. A lot of bad things happen in our world, and I see the consequences of them in my work. What motivates me is helping those who I can help and informing policy and other interventions that can somehow change this trend. I hope my testimony can help all of you make the right decision for the residents of our State.

ASSEMBLYMAN TOBY YUREK (Assembly District No. 19):
The tragic incident that brings us to hear S.B. 322 happened in my District. We are here to address a growing concern in our community: reckless driving and its heartbreaking consequences. For two decades, I served as a police officer in the City of Henderson. I had the unfortunate experience of responding to far too many traffic accidents in which the thoughtless and negligent behavior of an individual led to the ultimate fate of another.

Ingrained in my memory are countless images of dead, mutilated and mangled bodies. I saw how heartbreak altered the lives of surviving family who were

forced to put the pieces of their lives back together long after the perpetrator who caused so much pain was set free to live normally.

I want to acknowledge the distinction between the inherent risk of accidents that occur in the normal course of driving and those that occur when an individual chooses to intentionally engage in extreme reckless conduct. It is has been suggested today the behavior is similar to when somebody chooses to drink and drive. There is an increased risk of substantial bodily harm and death because of that conscious choice to engage in destructive conduct which brings harm to others. That is what we are hoping to address today.

You have heard a lot of statistics. In recent years, we have seen an alarming increase in the number of deaths related to reckless driving, particularly in Las Vegas. State data on traffic fatalities only go back to 1991. In 2022, we had 1 of the highest traffic death counts in the past 32 years. The disturbing statistics speak of the urgency for a necessary response.

In 2022, Clark County saw an increase in deadly crashes with 246 fatalities, up 4 percent from 2021's 236 road deaths. Pedestrian deaths rose 5 percent between 2021 and 2022; cyclist deaths jumped 114 percent. Recent news reports suggest between 2020 and 2022, tickets for drivers going more than 100 mph jumped 26 percent. In 2020, more than 4,400 drivers were cited for driving 100 mph or more—nearly 900 more than in 2019.

These are not just numbers. They represent real people and their families and loved ones left to grieve over devastating losses. One such tragedy is the story of 13-year-old Rex Patchett, struck and killed as he rode a scooter in front of his school by a reckless driver going more than 90 mph. The driver was sentenced to the maximum of six years in prison but could serve as few as two years before being eligible for parole.

This is unacceptable and painful to the families who deserve equitable justice for their losses. We must take action to prevent such tragedies and deter intentional reckless driving by increasing the penalties for this irresponsible behavior.

SENATOR STONE:
I worked with district attorneys and public defenders on the proposed amendment (Exhibit I) to S.B. 322. We struck sections 1 and 2 of the bill

completely. In section 3, subsection 9, paragraph (a), we retained the penalty of one to six years for all reckless driving cases, except those covered by section 3, subsection 9, paragraph (b). In section 3, subsection 9, paragraph (b), we added a penalty of one to ten years for offenses involving 50 mph or more over the speed limit or offenses in school or pedestrian safety zones. The remainder of the language in section 3 was struck.

In section 3, subsection 9, paragraph (b), lines 32 and 33 of the proposed amendment, Exhibit I, are struck. The modification allows for people convicted under the section to continue to be eligible for probation at the discretion of the judge.

Finally, I request S.B. 322 be indexed like other laws with namesakes and referred to as "Rex's Law."

SENATOR NGUYEN:
I have worked with Senator Stone and Assemblyman Yurek to craft this legislation. When we look at our impairment laws, the penalties for DUI death or substantial bodily harm are some of the harshest in the Country. I always look at the parity of something like reckless driving, in which, arguably, a lot of intent goes into the decision to drive at such high speeds in a school zone.

I have younger kids, but they will soon be driving. My considerations in crafting some of the amendment language, Exhibit I, were heeded because like I and other parents know, sometimes tragic accidents do happen. If I had a young person who was texting and driving, I would hate for him or her to end up in the same penalty structure as the situation Mr. Patchett's family had to go through.

In section 3, subsection 9, paragraph (b) of the proposed amendment, Exhibit I, I appreciate giving some sentencing discretion back to the judge regarding probation. That is appropriate.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
The Nevada District Attorneys Association supports S.B. 322. In Clark County alone, we have had 1,292 traffic-related fatalities since 2017, a number that has been growing since 2019.

There are countless parents, siblings, relatives, coworkers and friends who suffer immensely when a life is needlessly taken. The purpose of S.B. 322 is to

increase penalties for drivers who kill innocent people while excessively speeding on our roadways and in pedestrian safety zones. Our hope is increased punishment will deter drivers from engaging in the behavior you heard about today. No family should have to endure what the Patchett family has endured.

JASON WALKER (Washoe County Sheriff's Office):
The Washoe County Sheriff's Office supports S.B. 322. I have worked on the Sheriff's major accident investigation team and have witnessed and investigated horrific crashes like we heard about today. Anything we can do to keep our roadways safer is the right thing. The motoring public is driving faster—and reckless drivers drive faster than all of them.

ELYSE MONROY-MARSALA (Nevada Public Health Association):
The Public Health Association members include trauma surgeons and traffic safety researchers like you heard from today. A lot of the data you heard today are about preventable situations. Speeding causes preventable deaths, which the Association seeks to end or limit with policies it supports.

JEFF ROGAN (Clark County):
Clark County supports S.B. 322, Rex's Law. This is a necessary policy change for all the reasons stated here today and many more. There are too many deaths on our roadways, and this is a way we hope can deter them.

MR. RIES:
The Las Vegas Metropolitan Police Department strongly supports S.B. 322, echoing the comments of Mr. Jones.

ZACH BUCHER (City of Las Vegas):
We have heard poignant, heart-touching testimony. Even though the City of Las Vegas only prosecutes misdemeanor crimes, the felonies we talked about today are prosecuted by the Clark County District Attorney. Reckless driving is a persistent problem in our community.

MR. HERRERA:
The Nevada Sheriffs' and Chiefs' Association strongly supports S.B. 322. It will assist and strengthen law enforcement's ability to keep our roadways safer. Rex's tragic story has become much too common across Nevada.

VANESSA (Unidentified Testifier):
My mom and I represent the family of a 2017 victim of reckless driving. We support S.B. 322 on behalf of them.

SENATOR STONE:
Mr. Patchett made it clear his being here today is not going to bring Rex back. He does not want another family to have to witness the carnage and suffer the loss his family had to endure. We witnessed Rex's life cut short, but his name can and will hopefully live for a long time through S.B. 322.

ASSEMBLYMAN YUREK:
I also thank the Patchett family for the courage they have demonstrated in the face of a horrible tragedy to try to make an impact and reverse the recent trend we have heard about today.

CHAIR SCHEIBLE:
We will close the hearing on S.B. 322.

VICE CHAIR HARRIS:
We will open the hearing on S.B. 417.

SENATE BILL 417: Revises provisions governing common-interest communities. (BDR 10-970)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):
We are well aware of the historical tensions between homeowners' associations (HOAs) and their members. Some of the actions Legislators have taken to protect HOA members have gone too far, exposing executive board members and their employees to harassment. Laws have also resulted in expensive demands on boards to fulfill unit owners' requests for records that sometimes have no bearing on the issue at hand.

Senate Bill 417 tries to rectify some of these errors by seeking balance between boards, their employees and unit owners to ensure people who work for HOAs, who answer the phones in the office every day or respond to unit owners' emails, are not subject to harassment, bullying or even criminal activity. I am joined by representatives of the HOA industry who will give us information about the kinds of violence HOA leadership and staff have faced in recent years,

including death threats, people following them and vandalization of their homes and cars.

Nobody deserves to experience that kind of intimidation or harassment. Current law requires HOA board members and staff to continue to interact with unit owners who may be engaged in this behavior. The purpose of S.B. 417 is to provide safeguards that are not criminal in nature but allow HOA boards and staff to carve out exceptions when unit owners are being more than just annoying, when they are harassing or bullying staff. Under the bill, HOA staff or board members can limit their interactions with those unit owners.

Section 1 of S.B. 417 removes certain employee information like contracts, hours, work, salary and benefit information from the list of records an executive board must make available for public review. It also removes the $10 per hour cap a unit owner or ombudsperson must pay to review an association's records. Instead, it requires the fee reflect the actual costs incurred by the HOA.

Section 2 prohibits a unit owner, tenant, guest or invitee of a unit owner from taking or encouraging another person to take retaliatory action against an executive board, a board member or staff of the HOA for doing any one of three things: providing a unit owner with a notice concerning applicable laws forming the basis of an alleged violation, failing in good faith to respond to a request or demand within a prescribed period and/or refusing to provide confidential information or otherwise engage in unlawful activity. Section 2 also provides an action may be taken by HOA board members or staff to recover compensatory damages and attorneys' fees and costs from a person who takes retaliatory action.

Section 3 defines the term "violation" as it relates to laws governing common-interest community behavior that causes harm, serious emotional distress or the reasonable apprehension of such to a person in the HOA or that creates a hostile environment for the person.

Section 4 of S.B. 417 allows the Commission for Common-Interest Communities and Condominium Hotels to impose sanctions, including disqualifying a person who files a vexatious misleading, retaliatory, frivolous, false or fraudulent affidavit with the Real Estate Division, Nevada Department of Business and Industry from serving on an HOA board for up to ten years.

Section 5 would require the Division to determine whether a violation alleged in an affidavit constitutes an actual violation before referring it to the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels for further action.

A conceptual amendment (Exhibit J) adds bullying as prohibited conduct under NRS 116.31184 in a manner analogous to that defined in NRS 388.122.

ADAM CLARKSON (Chair, CAI Nevada):
The CAI Legislative Action Committee (CAILAC) is the HOA industry's voice in the Legislature. We represent more than 1,300 members, including community association leaders and HOA service providers. I have practiced community association law since 2006.

Section 1 of S.B. 417 deals with what is known by CAILAC as the "weaponizing document request." It has become a method of continued harassment for HOA staff. A website tells people how to use this method to harass HOA managers and their volunteer board members by just asking for things. It is like the Old West with evil cowboys shooting at shopkeepers' feet; people ask for document after document after document.

We have HOAs that attract this harassment. People have asked for 100 documents over 3 months and made hundreds of document requests over a year. Under current statutes, those costs are shifted onto the HOA membership at large. That means that there is one person asking for a bunch of information, which, in most cases, is available on the association's website.

As per S.B. 378, which the Committee passed today, most HOA information is online, so all people must do is log in to get it. However, some people ask for information routinely and vexatiously, asking for the same things repeatedly. They will wait a few weeks and then ask for it again because they know staff must go get it. If that does not happen, people file a complaint against management. People basically use this as a method of harassment.

The CAILAC wants to shift document searches so the labor and financial burden is evenly balanced. We support HOA members' right to review their documents. However, that should be balanced against the interests of the HOA members paying for others to be able to review and manage those documents.

The standard HOA management contract includes keeping up financial records, providing necessary information, providing notices to members and conducting meetings. That does not necessarily include providing thousands of dollars of services per month to individual homeowners who ask for an insane number of documents from a manager. The CAILAC would like to shift the labor and financial burden.

Section 1, subsection 8 of S.B. 417 stipulates that someone who wants to legitimately view documents must do at his or her own expense as opposed to shifting the cost onto the membership at large.

Section 1, subsection 4, paragraph (a) provides for personal and professional employee information be redacted from documents. Boards supervise employees so have access to that information about individual employees. Members do not need to know what specific employees earn and what their bonuses are to the letter. The only times we have seen that information used is for online harassment, never for a credible reason. People who really do need the information have access.

Current law provides HOA unit owners the right to pursue board members and management for retaliation. However, if board members or managers are retaliated against by unit owners, they do not have a reciprocal right to retaliate—thus denying them equal protection under the law. Section 2 of S.B. 417 seeks to correct that.

The conceptual amendment, Exhibit J, adds bullying to NRS 116.31184, which prohibits other inappropriate acts considered harassment. It applies to everyone, so this is not adding bullying as protection simply for HOA board members, managers, community volunteers, committee members and homeowners. People should feel safe and comfortable in places they live.

Section 4, subsection 4 of the bill broadens the Division's ability to address persons who submit frivolous complaints. A lot of complaints are from people who are routine filers. The Division gets repeated complaints from the same people using part of the system to harass their HOAs. Basically, if you are filing vexatious misleading, retaliatory and frivolous complaints, you would be responsible for them, even if you are otherwise honorable or on an HOA board. If you file a complaint against someone and are not on the board or if you are a

manager and file inappropriate complaints, you will be held responsible. It could lead to a suspension of serving on the board.

These types of people are not those who should volunteer in a leadership position in the community; they are bad actors. The bill would provide requisite knowledge of offenders to the Division to prosecute them for filing frivolous or vexatious complaints. The Division must prove people knowingly filed what they had to know was vexatious or frivolous. People always prove feign ignorance, saying, "Oh, I did not know it, I was lying." We have removed the word "knowingly," so more likely than not the filing was vexatious, misleading, retaliatory or frivolous.

Senate Bill 417 is designed to protect homeowners, managers and HOA volunteers and reduce costs for the Division. It will lessen overall governmental costs by reducing the number of complaints from frequent flyers.

Section 5 will reduce government costs of handling HOA affairs by allowing the Division to determine if alleged violations constitute a violation of NRS 116.765. If it is determined the facts are true, that is not a violation of law and the Division would not investigate. Now, if the Division decides to initiate an investigation for a claim submitted, that involves a lot resources. Division staff must review the case, send out letters and communicate with third-party community associations. The HOAs must pay to review and respond to the letters. That is legal under NRS 116, but the Division should be able to toss alleged violations, saying, "OK, we understand what you said. But even if what you said is true, it is still not a violation of the law. So, we do not need to investigate it."

SENATOR NGUYEN:
In the criminal defense and prosecutorial world, we see a lot of vexatious litigants who have determinations. I liken Mr. Clarkson's testimony to that. Would S.B. 417 prevent people from being able to repeatedly request documents, which takes time and money? The bill would restrict people who are requesting hundreds of thousands of dollars in documents.

MR. CLARKSON:
Yes, overall, section 1 of the bill would deter repeated document requests. Technically, it is still going to allow people who want to keep asking for documents to get them, if they pay for the privilege. Let us say someone wants

a landscaping contract from ten years ago. He or she will have to pay for having those records pulled from storage, plus copying and collating costs.

The bill will allow the Division to essentially disregard vexatious complaints and prosecute people for repeated filings.

SENATOR STONE:
My wife is a board member of an HOA; a lot of what you are describing hits home. Unfortunately, sometimes people just do not like the HOA rules and do everything they can to recall and attack board members.

In section 4, if someone is filing vexatious, misleading, retaliatory, frivolous, false or fraudulent affidavits, could the HOA board file a claim with the Division? Would the Division issue the prohibition that somebody cannot run for board membership for up to ten years?

SENATOR SCHEIBLE:
Yes, that is correct.

SENATOR STONE:
There would be a quasi-hearing office within the Division. My concern is sometimes people are ignorant and unfortunately have wrong information on which to base their information. That may constitute an honest mistake.

I agree 100 percent that HOA staff's private information should not be disclosed. Would that prevent board members, as part of the budget process, from telling HOA members the cost for the management service? The board could tell homeowners it is going to cumulatively cost them $5,000 or $10,000 a month, without revealing the specifics of what employees earn or any other pertinent information.

SENATOR SCHEIBLE:
Yes, that is correct. Boards could still provide general information, but the bill is designed to avoid giving bullies tools to find out exactly what someone earns, exactly what hours he or she works or who opens up the office on Tuesday mornings at 8 a.m.

SAMANTHA SATO (Nevada Association of Community Managers):
The Nevada Association of Community Managers strongly supports S.B. 417.

GREGORY KERR (CAI Nevada):
I have practiced law in Nevada since 2007, exclusively representing HOAs. Regarding releasing salary and employment information for HOA employees, in my experience, the only people or homeowners who request that information wish to use it improperly or as a method to attack or harass employees.

It does not matter if the community manager makes $1 or $200,000 a year, it is always too much and he or she always needs to be fired, according to homeowners who typically ask for the information. The information ends up on websites such as Nextdoor or Facebook or in emails to harass and embarrass the managers. Senate Bill 417 will protect employees, at least on that front.

Section 3 gives the Division the jurisdiction to enforce the antiharassment statute, NRS 116.31184. Violations of that statute are a misdemeanor only enforceable through law enforcement, which typically lacks the time or resources to enforce it. Section 3 will give the statute teeth and actual application if the Division can enforce the bill's particular violations. All parties will benefit: homeowners, managers and boards of directors.

ANNE CALARCO:
I am a CAILAC member, an owner and president of a community management company and a board member of my HOA for more than 17 years. I have seen issues in the bill play out all the way around. I support S.B. 417 for a variety of reasons.

My main concern is trying to accommodate homeowners' requests received in writing for copies of documents. Some of these documents have been in archives and storage and kept by prior management companies for more than seven to ten years. To pull and assemble those documents can require 2 to 3 of my staff members—not just the manager or administrative assistant—to work together to pull the material in a timely manner, which is within 21 days.

In many cases, a homeowner has a particular group of issues or an axe to grind over being unhappy with rules, regulations or actions made and taken by the board. Using the best defense is a good offense mechanism, he or she bombards the manager on a weekly or daily basis, providing via email written documentation of requests. Documents are requested in such a way that it puts my manager, staff and me as the supervisor in a position of trying to produce every piece of required documentation within 21 days from the date of every

emailed request. It becomes cumbersome and expensive from a labor-cost standpoint. The HOA client usually must bear that burden of cost as additional items built into the management agreement.

LAURIE BERGER:
I am a member of CAILAC and regional vice president for my management company in Reno. I support S.B. 417. As an HOA manager. I am always pleased when a homeowner calls to request information. We are here to help and glad homeowners are engaged. The bill helps strike a balance, and HOA managers need its protections.

Sometimes, owners make numerous requests. While some requests may be excessive, time is of the essence to fulfill them. We only have 21 days to ask questions and figure out what we need to do. We need to get the information out to the homeowner while protecting our HOA licenses.

In my last document request from a homeowner, there were 25 different categories. It took my staff 65 hours to produce the documents. The homeowner requested nine years of general ledgers, monthly financial reports, bank statements, copies of checks, invoices and contracts. In some cases, we can pull documents electronically, but a lot of that stuff is in storage.

The issue was not just producing the records. The general ledgers needed to be redacted. We removed homeowners' names and payments made to sensitive people that homeowners should not know about. We removed bank account numbers from 432 bank statements. Delinquency reports had to be redacted from the financial reports and thousands of invoices needed to be reviewed. Section 2 of the bill will help managers with this problem.

I had a community manager circulating through a property doing an inspection when a homeowner came out and spoke with the manager. The man got into a Tesla and followed the manager through the property onto the freeway. The manager called the police for assistance. The man pulled his car off the freeway at another ramp, where he was met by several policemen. The homeowner did not do anything wrong. The police just told him to behave and go away, but our manager was petrified.

VALERIE SANTANA:
I am an HOA manager in Reno, a CAILAC member and a partner in a small management company. I support S.B. 417. As others have said, managers have all experienced this type of behavior from a homeowner with an axe to grind for whatever reason. It is burdensome and puts our licenses at risk.

As a small management company owner, I can say to my partners, "We do not need this kind of business" and give notice to an association once its contract ends. Managers in larger companies must tolerate the abuse. It is wrong there is no equitable solution to protect managers from homeowners behaving in this manner.

RHONDA TYSON:
I am president of a 100-unit condominium association that supports S.B. 417. I will describe four examples of what I have endured during my short tenure on my HOA board. A homeowner sent an email to all the board members advising them he had a conceal-carry permit and we should assume he was armed when seen on his property. An owner who was disappointed in a board ruling made three consecutive complaints to the Real Estate Division alleging the identical set of facts; each time, the complaints were dismissed as unfounded. An owner decided to do his own plumbing without a permit and flooded his downstairs neighbor. When the board sanctioned him, he filed a recall petition to remove its members. Of course, the board members cannot discuss his violation because it is confidential, allowing him to lie about his reasons for doing the plumbing. Last but not least was the owner who sprayed graffiti in the apartment stairwell of a board member he perceives to be gay. The image was a smiley face and tagged. "God hates fags."

People like to talk about bad HOA boards. However, we will never have good boards unless good people are willing to serve. Yet, good people will not serve as long as they are subjected to that kind of harassment.

ROBERT ALLEN FORNEY (President, Complex Solutions):
Complex Solutions is the largest Nevada company that does HOA reserve studies. I am on the CAILAC but have not vetted my testimony with it. I am representing myself as a vendor who serves HOAs.

The following statistics are from Zogby Analytics as commissioned by the CAILAC Research Foundation. Approximately 518,000 Nevadans live in more

than 3,490 community associations. Those residents pay $920 year between their communities. Those are costs local governments do not have to bear. Eighty-four percent say they always or usually vote in State and local elections. Eighty-nine percent said their HOA rules protect and enhance their property values; 74 percent said their community managers provide value and support to residents. These are high-quality people.

A gentleman, in my opinion, got on his HOA board for the sole purpose of causing problems. Having more power, he had clearly read every statute dealing with reserve studies and asked me an insane number of questions and for copies of a lot of things. At first, having no experience with this before, I tried to accommodate and placate him. Then I had nothing to do with him because I realized I was only giving him ammunition to cause more problems for his management company.

There is no such thing as an HOA. That is only a fancy name for a collection of people who live in a neighborhood. They come together to try to maintain the value of their neighborhood and bring value to the State. We should be concerned with those individual homeowners and the community managers who are the best and most educated in the Country and serve them.

MICHAEL KOSOR:
You have my written testimony (Exhibit K). I strongly oppose S.B. 417. I am one of two elected directors on my master association board of nearly 9,000 units in my community. It has been controlled by a declarant for 23 years.

We need to advance board transparency, especially when they are declarant-controlled, and encourage greater participation of homeowners. I have been the victim of a defamation action, the first legal action of my life. It took five years, a Nevada Supreme Court ruling and nearly seven figures in attorney fees to exonerate me, even when invoking Nevada's laws against strategic lawsuits against public participation (SLAPP).

While the Court found the developer’s actions a “quintessential SLAPP,” the developer and his appointed board lost the battle but won the war. My neighbors dare not be next to complain so elected me to represent them.

I am a retired U.S. Air Force colonel, serving as a fighter pilot with combat experience in the Gulf War. Yet, the experience of defending the attacks of the developer on my family's financial future was the most stressful experience of my life.

I agree defamation and harassment have no place in an HOA. However, the bill as written, particularly sections 2 and 3, will allow HOA boards to determine what they consider defamatory and harassment. That will ultimately provide them with the ability to censor free speech based on opposition positions from that of the board or the declarant, if it is appropriate.

When it was added in 2013, NRS 116 was intended to provide the Division and Commission for Common-Interest Communities and Condominium Hotels the power to protect homeowners, corporate boards and management. Existing civil laws dealt with owner misconduct. What is now proposed creates a new crime and flips that protection on its head. It is an assault on the First Amendment, an end run around Nevada's anti-SLAPP laws and generally works to chill owner opposition to the governance of their communities. It is also a moneymaker for attorneys and management companies.

Hopefully, it was not lost on you that those who spoke in support of this bill are almost entirely members of CAILAC, a lobbyist group. How are the homeowners being represented, Senators? We must turn to you for that representation. We are not down in your offices with the kind of access lobbyist groups have.

Section 4 of S.B. 417 mandates ten years' suspension from a board for filing a misleading affidavit with the Division. That is rather extreme, particularly considering a convicted criminal released from probation is only restricted for four years. Section 5 is nonsensical, adding complexity and ambiguity if you assume an alleged violation is true. Is that not a violation?

I am not sure how that will help other than allow the Division to simply disregard an affidavit without going to the Ombudsperson, who is supposed to represent the public in tracking the Division for accountability.

In section 1, subsection 8, charging "actual costs" for access to HOA records is not prescribed in any other industry. It is being used to deny homeowners their right to get information. Homeowners already pay their management companies for that service. Yes, there are going to be abuses in anything unless we target

the abuses. Finally, I would suggest to you that there is a counterpoint to the comments we heard today: simply asking for information when you do not get an answer. What is your recourse?

Had the Common-Interest Communities Task Force enacted during the Eightieth Legislative Session, designed to improve HOA laws, been used as intended, much of these issues could have been avoided.

SAMUEL COVELLI:
I am a retired Nevada correctional sergeant and Vietnam veteran. I have been a Las Vegas homeowner for 22 years. I oppose S.B. 417. Most of it is arbitrary and capricious. It gives overadvantaged lawyers, community managers and unscrupulous boards the ability to silence homeowners.

Like most of the people who live in my community, I did not pay attention to what was going on in my HOA. Everything was hunky-dory last year. I started requesting documents because I am now a retiree. I requested a simple audit of the HOA as required by law. I have been battling this for a year, trying to get elemental information. Now I am getting cease-and-desist letters.

Mr. Clarkson mentioned you can go on a website and get the information you requested. However, in my situation, it was just not there. You send a kind email requesting the information; you are ignored. Twenty-one days later, you send a letter with a return request, which you have to pay for. Again, you are ignored. Then you can file a Form 530 Intervention Affidavit through the Office of the Ombudsman, which must be notarized. If you have never filled one out, the average homeowner cannot do it. The document request process is convoluted to start with, and now you want to completely overhaul it for the benefit of CAILAC?

In section 2, subsection 2, paragraph (b) of S.B. 417, a board can take action against a homeowner. You cannot take action against them if they failed in good faith to respond to a request or demand within the prescribed period pursuant to the governing documents of the association. This is arbitrary and capricious. *Nevada Revised Statutes* 116.31175 mandates boards must provide financial reports to homeowners. I have not made unusual requests yet am stonewalled constantly. I am forced to file the Ombudsman's procedure, the 530 affidavit, no matter what I ask for.

The whole crux of the bill is to boost community managers, unscrupulous boards and attorneys' ability to stonewall homeowners. The process is not in favor of the homeowner; it is horribly slanted against us.

If you point out a violation of NRS, the board attorney claims the violation only occurred once. I gave my board 1,200 pages' worth of violations. Its financial documents were finally sent to me after I went through this horrible process. It is ridiculous.

I am sure there are good HOA boards and management companies. I am sure there are good attorneys in the community representing people, However, this whole process is horribly slanted against homeowners. I will take some of the blame for not paying attention to what went on in my HOA for 20 years. The bill will not do any good for what is a cut-and-dried situation. To pass it will be a horrible disservice to the homeowners of Nevada.

HOWARD MCCARLEY:
You have my letter of opposition (Exhibit L) to S.B. 417. I am a resident of Las Vegas. One of Governor Joe Lombardo's first acts was an executive order asking State agencies to reduce the number of regulations. Rather than reducing bureaucracy and regulation, the changes proposed in S.B. 417 increase the scope and breadth of regulations regarding HOAs.

When I search for "HOA" on the Internet, I find thousands of horror stories from homeowners of mistreatment by HOA boards and management companies. I have never seen a board or management company crying about being harassed or threatened by a resident.

There is a reason for this. There is an imbalance of power between homeowners and HOAs and management companies. Extensive financial resources are available to associations and managers; residents are on their own. The cost of providing information requested by residents is or should be built into assessments paid by residents. *Nevada Revised Statutes* contains numerous provisions used to protect HOA employees and organizations from harassment or defamation, but that requires filing complaints through a venue other than one substantially controlled by real estate interests. They want the ability to define the terms to suit their purpose.

The bill's changes are unnecessary and place an unreasonable burden on residents unsatisfied with the performance of management companies. They are intended to silence critics of the companies. A more positive move would be to reactivate the Common-Interest Communities Task Force set up in 2019 to look at HOA regulations and suggest changes. Did that Task Force review the suggested revision to move the self-funded Office of the Ombudsman out of the Real Estate Division to the Office of the Attorney General? Does the bill require a review of all proposed covenants, conditions and restrictions (CC&Rs) performing content before recording to ensure the CC&Rs protect residents, not the developer? Given circumstances in the Country now, do we really want to entertain another impediment to people being able to question how they are governed or how contracts are awarded? Ask yourself if the proposed changes enhance the rights of homeowners versus further the already unbalanced powers of HOA management companies.

SHARATH CHANDRA (Administrator, Real Estate Division, Nevada Department of Business and Industry):
The Real Estate Division is neutral on S.B. 417.

CHAIR SCHEIBLE:
We will close the hearing on S.B. 417 and open public comment.

MR. KOSOR:
I have provided you with the link to an article (Exhibit M) published in 2022 on the Independent American Communities' blog which reviewed my case. At issue was my fight with the Division's interpretation of NRS 116.2117. The statute provides a repose after one year if you do not legally challenge an amendment to CC&Rs. It has been interpreted the statute of repose is applicable to all amendments in the first years of an association. The unilateral efforts of the declarant are typically appropriate under limits set in NRS. A declarant can add, modify, subtract and correct proposed amendments.

Here is where the problem arises: if the amendments are not yet adopted, they require no owner education or vote. Yet, they are entitled to a repose despite clear intentions in NRS the repose applies only to adopted amendments. Senators, our courts have inexplicably upheld the Division's ability to interpret statutes as it sees fit. Take a hard look of this and fix the dangerous precedent now established.

ANNEMARIE GRANT:
My brother Thomas Purdy was 38 years old when he was murdered by Reno police in the Washoe County Sheriff's Office during a mental health crisis. Thomas was hog-tied for more than 40 minutes and asphyxiated to death. Since the Eighty-first Legislative Session, 47 human beings—somebody's loved ones—have died during interactions with police in Nevada.

I would like to remember the 17 U.S. veterans who survived war but not police custody in Nevada: Darrin Dyer, September 24, 2022; David Freeman, August 11, 2003, Marines; David Coon, April 9, 2014, Marines; Enrique Julio Serrano, April 11, 2016, Army; Erik Scott, July 10, 2010, Marines; Francis Spivey, February, 25, 2015, Air Force; James Wayne, May 7, 2020, Navy; John Paul Hambleton, July 1, 2009, Army; Kenneth Stafford, July 11, 2013, Army; Leon Buck, August 17, 2006; [unintelligible] Lloyd, October, 27, 2018, Marines; Robert McKinney, May 10, 2001, Army; Ronald Joseph, Jr., June 6, 2007; Stanley Gibson, December 12, 2011, Army; Tommy Curdle, November 30, 2014, Marines; Tommy Lee Guest, Jr., August 12, 2001, Army; Owen Earl Barton, January 16, 2020. There are constitutional violations happening at the Washoe County Jail, and you should look into it.

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CHAIR SCHEIBLE:
We will close public comment. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 2:42 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
S.B. 171	C	2	Patrick Guinan	Work Session Document
S.B. 174	D	4	Patrick Guinan	Work Session Document
S.B. 362	E	5	Patrick Guinan	Work Session Document
S.B. 378	F	5	Patrick Guinan	Work Session Document
S.B. 395	G	6	Patrick Guinan	Work Session Document
S.B. 284	H	15	Brennan White / Mothers Against Drunk Driving, Southern Nevada Affiliate	Support Testimony
S.B. 322	I	25	Senator Jeff Stone	Proposed Amendment
S.B. 417	J	30	Senator Melanie Scheible	Proposed Conceptual Amendment
S.B. 417	K	37	Michael Kosor	Opposition Testimony
S.B. 417	L	40	Howard McCarley	Opposition Letter
S.B. 417	M	41	Michael Kosor	2022 Article Independent American Communities