MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-Third Session
March 18, 2025

The Committee on Judiciary was called to order by Chair Brittney M. Miller at 8:01 a.m. on Tuesday, March 18, 2025, in Room 138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 3 of the Nevada Legislature Hearing Rooms, 7120 Amigo Street, Las Vegas, Nevada. Copies of the minutes, including the Agenda [Exhibit A], the Attendance Roster [Exhibit B], and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/83rd2025.

COMMITTEE MEMBERS PRESENT:

Assemblymember Brittney M. Miller, Chair
Assemblymember Elaine H. Marzola, Vice Chair
Assemblymember Lisa K. Cole
Assemblymember Joe Dalia
Assemblymember Cecelia González
Assemblymember Alexis M. Hansen
Assemblymember Melissa R. Hardy
Assemblymember Cinthia Zermeño Moore
Assemblymember Hanadi Nadeem
Assemblymember David Orentlicher
Assemblymember Erica P. Roth
Assemblymember Toby Yurek

COMMITTEE MEMBERS ABSENT:

Assemblymember Ken Gray (excused)
Assemblymember Selena La Rue Hatch (excused)

GUEST LEGISLATORS PRESENT:

Assemblymember PK O'Neill, Assembly District No. 40

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Committee Policy Analyst
Karly O'Krent, Committee Counsel
Aaron Klatt, Committee Manager
Nicholas Fischer, Committee Secretary
Ashley Torres, Committee Assistant

OTHERS PRESENT:

Todd Williams, Detective, Washoe County Sheriff's Office
Peg Samples, Chief Deputy District Attorney, Washoe County Child Advocacy Center
Jennifer P. Noble, Chief Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Jason Woodard, representing Nevada Sheriffs' and Chiefs' Association
Joshua Martinez, Captain, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson
Eva Kilamyan, Private Citizen, San Diego, California
Angela Knott, Deputy Public Defender, Legislative Liaison, Washoe County Public Defender's Office
Paloma M. Guerrero, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Kaylah Maese, Civil Rights Analyst, American Civil Liberties Union of Nevada
Tonja Brown, Private Citizen, Carson City, Nevada
Annemarie Grant, Private Citizen, Quincy, Massachusetts

Chair Miller:
[Roll was called. Committee rules and protocol were explained.] I will open the hearing for Assembly Bill 275.

Assembly Bill 275: Revises provisions related to criminal procedure. (BDR 14-548)

Assemblymember PK O'Neill, Assembly District No. 40:
Sitting with me today is Todd Williams and Chief Deputy District Attorney Peg Samples. Today, it is my pleasure to present to you Assembly Bill 275, which seeks to ensure juries have full, complete, and accurate information in cases concerning Nevada's smallest and most vulnerable victims. It is narrowly tailored to apply only to child sexual abuse cases. Under current law, when a child or their family member confronts their abuser via telephone, any law enforcement officer present must take notes to document any statements of the

defendant. At trial, the officer's testimony is based upon their notes and memory of that conversation. Assembly Bill 275 creates a narrow exception to Nevada's general rule that telephone calls may only be recorded with the consent of both parties, applicable exclusively to child sexual abuse cases. It will ensure Nevada juries make decisions based upon the best evidence regarding statements made by defendants and their conversations.

I would like to go through the bill quickly before we move on. Section 2 of the bill defines which offenses constitute sexual abuse against a child. Section 3 of the bill provides that in child sexual abuse cases, only a peace officer or a person acting on a peace officer's direction or request may intercept, listen, or record a communication for the sole purpose of investigating a sexual offense against a child. It also narrowly defines the term "person" to mean a child, or person, or parent, or legal guardian.

This is where we have an amendment you all should have in front of you, which will be uploaded to Nevada Electronic Legislative Information System [Exhibit C]. It came in late last night and I apologize for that, Chair. Yesterday was a hectic day to put it mildly between the outage and a few other challenges we had. I would like to have you note that the amendment states in section 3, lines 13-18, "Where one party to an electronic or oral communication consents to the interception, listening or recording of a wire, electronic or oral communication by a peace officer, or a person acting…." It is that first part of the amendment we are proposing. Section 3 of the bill provides that in child sexual abuse cases, only a peace officer or a person acting with the peace officer's direction may request the interception.

Please note the conceptual amendment in this section, as we stated, clarifies it is only one party to the phone call. The victim, their parent, or legal guardian must consent to the recording. Section 5 simply moves the definition of sexual offense of a child to the beginning of the statute.

I would now like to turn some time over to Washoe County Detective Todd Williams, who has a short PowerPoint, and then Washoe County Chief Deputy District Attorney Peg Samples to explain it. We will be ready for questions at that time.

Todd Williams, Detective, Washoe County Sheriff's Office:
I am assigned to investigate crimes against children. We have a brief PowerPoint presentation [Exhibit D] to go over this bill and why we believe it is important. This bill is about child crimes, and it will change *Nevada Revised Statutes* (NRS) 179.463. We propose a change that would allow Nevada peace officers, with consent of one party, to record telephone communications for the sole purpose of investigating a sexual offense against a child.

Why? We believe it empowers child victims of sexual abuse to confront their abusers. These recorded communications are widely used around the nation to assist in solving and adjudicating cases of child sexual assault. It ensures the prosecution, the defense, the judges,

jury, and appellate courts are presented with accurate recordings and not just relying on law enforcement and/or witness testimony, statements, or reports. Also, Nevada is one of the most restrictive states in the nation when it comes to recording a telephone call.

This all came to be when my colleagues and I attended the San Diego International Conference on Child and Family Maltreatment at the beginning of 2024. During this conference, we met with investigators, prosecutors, and judges from around the world, and we had an open forum discussion specifically on pretextual phone calls and their use in child sexual abuse cases. We found Nevada is one of the most restrictive states in the entire nation, with only ten states having the same laws as Nevada—where it is a two-party consent or all-party consent state—and does not have any law enforcement exemption. The other states that were present during the forum spoke about a 50 percent success rate in getting admissions and gaining valuable investigative information from these pretextual phone calls.

We came up with a few case examples. I want to let you know the case examples contain graphic information; however, they are essential to understanding the necessity and impact of A.B. 275 and why we are here discussing it today. We have one case example from the San Diego District Attorney's Office, who has been remarkable in helping us get this far. There is a case locally out of Washoe County where the main difference would be San Diego is allowed to record their pretextual phone calls and we are not. Case number one: a five-year-old girl disclosed to her mother that her biological father made her perform oral sex on him by promising to give her a lucky dollar, but he never gave her the dollar. She said he made her perform oral sex more than once, but because of her young age, she had a difficult time explaining how many times it happened, when the acts occurred, or details about the acts. Even though this is common for very young children who lack the development to understand time and numbers, the defense will usually use this against the prosecution to argue the child is not credible. We had no other evidence of abuse, such as DNA, witnesses, prior history of sex crimes, et cetera. However, in a pretextual call, the girl's mother confronted the defendant, and he admitted to putting his penis in her mouth and explained he was using meth, which turns him into a pervert. He ultimately pled guilty and was sentenced to 30 years in prison. I would like to turn it over to Chief Deputy District Attorney Peg Samples for the local case.

Peg Samples, Chief Deputy District Attorney, Washoe County Child Advocacy Center:
For a brief Washoe County example, we did have a case involving a 40-year-old man. He was commonly used as a babysitter by two mothers. Both of them were single mothers and both had 11-year-old children. He subjected both of the 11-year-old children, little girls, to repeated sexual abuse. One of them finally worked up the courage to tell her mother after a long period of time. Her mother reported that to the Sparks Police Department. One of the first things the Sparks Police Department did is use the mother to make one of these phone calls to the defendant. It was not recorded, obviously, but it was supervised by a detective. The defendant did make admissions. There were other parts of the investigation, but the case

did proceed to trial. Obviously, a big part of the State's evidence was the victim's testimony, but another part was the detective's testimony and the mother's testimony about that recorded phone call. The defendant was convicted of ten counts of sexual assault on a child and lewdness with a child. That phone call became an important piece of the puzzle.

Assemblymember O'Neill:
We now sit for any questions the Committee may have.

Assemblymember Roth:
The first thing that comes to my mind is the Fourth Amendment. Can you walk me through why this is not already an exigent circumstance or why this should fall outside of the warrant requirement?

Peg Samples:
Since it is not a search or seizure, we are outside the scope of the Fourth Amendment. We do have exigency circumstances currently codified into our wiretap statute, and one of them is not child sexual abuse. The exigency circumstances in our wiretap statutes—which I think is maybe the call of your question and if not, I am happy to clarify or listen to a follow-up question—are things like if somebody is holding someone hostage or is barricaded in some sort of building. In terms of the need for this to not be a warrant, and the reasons why that is sort of burdensome, I can turn it over to Detective Williams to clarify that.

Todd Williams:
Currently, Nevada statute says for wiretaps we must have exhausted every possible opportunity to do this, or to get a wiretap warrant. They are very costly. In fact, I believe no agency in the state of Nevada has the ability to set up a wiretap. The last time we attempted to use one on a very different case, we had to use Homeland Security, and it cost thousands of dollars. Additionally, with the statute stating for us to apply for a wiretap warrant, we have to have exhausted every possible lead. That would mean having interviewed the suspect, which would completely void and get rid of the point of these phone calls.

Peg Samples:
Another concern with a wiretap is it captures and records everybody who is calling the phone that is the subject of the wiretap—not just the suspect, not just the victim or a victim's non-offending parents. It is actually broader and goes more into interfering with privacy rights of people who have nothing to do with the investigation.

Assemblymember Roth:
For clarification, if we can take a step back, this is a search and seizure under the Fourth Amendment. Is there a reason obtaining a warrant is not reasonable in this case?

Peg Samples:
What we would have to do is obtain a wiretap warrant. Those have to be obtained with the approval of a district court judge or a Nevada Supreme Court judge. They do not work 24/7; these investigations are going on 24/7. As Detective Williams said, one of the reasons is, it is very expensive, it is time consuming, but it also lacks a bit of practicality.

Chair Miller:
Could you repeat that last statement? What lacks a bit of practicality?

Peg Samples:
The requirement to get a warrant. These investigations are done around the clock. Getting a wiretap warrant requires a Nevada Supreme Court judge or a district court judge's approval. If you have a case where you need to make one of these phone calls when a suspect gets off of work, for example, at two o'clock in the morning, that is not practical to get a Nevada Supreme Court judge or a district court judge on the phone or in person to approve one of these warrants.

Assemblymember Yurek:
Thank you, detectives, for what you do in this space; just by the examples you gave, that is a difficult space to operate in. Thank you for the courage it takes to do those types of investigations and deal with some pretty horrific facts. If I understand correctly, federal law allows one-party consent recording of conversations, but there are certain states that apply stricter requirements and require two-party consent for recording these types of conversations. To help put it in perspective, can you clarify how many states currently go further than what federal law requires and actually require two-party consent?

Todd Williams:
Currently, there are ten states that require two-party consent and are more restrictive than the federal government. The federal government does allow one-party consent when it comes to recording telephone calls.

Assemblymember Dalia:
I have a question about the usage limitations on the recordings obtained for this purpose. From my reading of the language, it seems as long as you are intercepting it for the sole purpose of investigating a sexual offense against a child, I do not read any usage restrictions on how that can be used if you end up getting something in that recording that could be used for another criminal prosecution. Can you talk to me about what you imagine the guardrails would be for that?

Peg Samples:
I imagine it would definitely be used in a criminal prosecution as evidence.

Assemblymember Hansen:
Certainly, I wish you two were unemployed. As my colleague said, thank you for what you do. Really hard work. How do these telephone conversations affect the victim, if you could maybe elaborate?

Peg Samples:
I want to go back a little bit in time to 2021, two sessions ago. This Committee actually started a bill, Assembly Bill 228 of the 81st Session, which codified and defined what a child advocacy center is. Part of that was to define what the goals of a child advocacy center are, and those are now in law in NRS 432B.4012. The first goal is to investigate and help children recover from abuse and neglect. When a child who has been victimized is able to finally work up the courage and throw off the cloak of secrecy that sexual abuse happens in and tells someone about it, but then also participates in their own investigation, it has immeasurable effects for the recovery from their trauma. I think that is a very, very important goal of A.B. 275. If passed, this can be one more step in the recovery of children who have been sexually abused.

Chair Miller:
My colleague asked a question I had as well about the actual victims: the children. You stated the agencies spoke about this, but this being such a sensitive issue for children, are there counselors who are involved in this process? Is there someone from medical or mental health who would say this would be appropriate or okay for the child? When it comes to facing or participating in this, I also see the reverse, how it could be very damaging and scary. What type of research or consulting has been done on that front?

Peg Samples:
The cases that would use these types of phone calls would primarily be routed through and investigated in conjunction with the Washoe County Child Advocacy Center and other child advocacy centers in our state. Every child who comes to the Washoe County Child Advocacy Center has access to immediate mental health counseling and continuing mental health counseling. There are a number of factors that would be considered by law enforcement before they use a child in one, or a series, of these phone calls. I can let Detective Williams address those further.

Todd Williams:
To clarify, this is currently done in the state of Nevada, they are just not recorded; that is what this bill is trying to do. When we have used these before, we take every precaution. Ultimately, we are in this job to protect children and make sure they are getting the help they need, and they are not continuing to be revictimized. From the very start of when we take the initial case, we have victim advocates who work with the child and their parents to make sure they are in a good spot, and they actually want to proceed with criminal charges in this investigation. We do not necessarily always use the child. Sometimes we use the parent or

the guardian, depending on where the child is at mentally, where they are at in the recovery process. There are a lot of things that come into play: the child's age and numerous things. I cannot give you a specific. There is no set-in-stone answer as to who this is best for. We take it case by case.

Assemblymember Cole:
I think that partially answered my question. I am looking at this; it is already happening. You said you have used it successfully in a trial; you just did not have the recording. The way I look at this, it actually provides some protections to the defendant as well, so it is clearly documented. There is no question as to whether or not it was taken out of context. Would you agree with that, that it does provide protections?

Todd Williams:
I will let Peg Samples answer here in a second. Yes, absolutely. I think the major importance with needing the recording is currently we require two detectives to sit in the room when we do this. One detective is the primary case agent and then another detective is a witnessing officer. We take notes as quickly as we can to best memorialize the conversation that is documented. But there are things we are not able to accurately get into a report or statement. That is tone of voice, pauses, inflections, attitude, and things like that, These are not easy to put in black and white on a piece of paper.

Peg Samples:
I absolutely think this protects defendants as well if these recordings are used at trial. We have to come to the uncomfortable topic of how long it sometimes takes to get to trial. After the investigation, during which these recorded calls would be part of the investigation, it can take years to get to trial. By that time, memories have faded, no matter what, no matter who is testifying. To have it on a recorded tape is much more accurate for both parties, yes.

Assemblymember González:
For clarity—because I feel like in some answers, you have kind of walked through it, and then in other answers we have just had partial—can you walk through how you are currently operating? Then can you talk about the case that did go to trial and how you used it in that case? Was the person convicted or not?

Todd Williams:
I will cover the investigative portion. I will give it to Chief Deputy District Attorney Samples for the trial portion of it. Currently, we take an investigative case. There are quite a few things we take into account when we decide whether or not this will be a good investigative tool for a case or not; whether or not the defendant knows where the child is at in the recovery process and things like that. There is a lot that goes into account. Like I said, it is a case-by-case basis, but when we do it, we strategize with the child and/or the parent and talk about how we want to cover and what the goal is, what the disclosure was that was made by the child.

Ultimately, we schedule a time, whether that be at the child's house or at the sheriff's office or a mutual place. We figure out the best time it is going to happen, and then we either begin by a text message conversation with the suspect and/or just calling the suspect. These conversations are never audio recorded. Text messages are a little bit different because they are memorialized on a phone, but they are never audio recorded. It takes two detectives sitting there. We basically have previously covered what the goal is we are trying to speak about with the suspect. We strategize with the child and/or the parent, and then we just try to keep them on track to get them to where they are talking about the specifics of the disclosure that was made, whether it is inculpatory evidence that is gathered or exculpatory evidence that is gathered. Ultimately, at the end of the day, we end the conversation, and then there are other investigative steps that have happened.

I can speak for a case that my agency investigated a few years ago where a child found a cell phone recording inside of her bathroom. She discovered it was her mom's boyfriend's cell phone. She went to her mother and informed her of this cell phone she found. The mother decided to stay with the boyfriend. She gained the courage and eventually told law enforcement about this case. We took a case on it and we found a pretextual phone call would be a good strategy and the child was in a good place to do that. We did the pretextual phone call at the sheriff's office, and during that conversation the suspect admitted to what he did, apologized to her, and then kind of guilt tripped her and said, My life is in your hands, and things along those lines. There were two detectives present who memorialized that in reports. The conversation ended.

Later down the road, the suspect was brought in for an interview, and during the interview he denied. He said, Absolutely not, the child's disclosure is inaccurate, it is false, never happened, until we were able to use the pretextual information we gathered and then he changed and admitted. He pled guilty in court and was sentenced to 1 to 5 years. As for how it normally plays out, I will give it to Chief Deputy District Attorney Samples.

Peg Samples:
When a case proceeds to jury trial, generally how these cases go is the victims will testify first and then we call in some of the corroborating witnesses. In the case I spoke about in Detective Williams' introduction, both the 11-year-old children testified. I believe the mother who had done the recorded phone call with the detective testified and was asked questions about that phone call, and then the detective testified and was asked questions about the contents of that phone call and the statements the defendant made during that phone call. It was similar to the case Detective Williams just talked about. During the investigation, the phone call was one of the first pieces of the investigation, but then detectives actually went out and interviewed the defendant, confronted him with some statements he made during the phone call with the mom, and proceeded to get more inculpatory statements from the defendant. That case was a jury trial. The jury did find the defendant guilty of ten counts of various crimes involving sexual abuse against those two girls.

Assemblymember González:
I am sorry if I missed this in your presentation, but when we are talking about a child, is there a specific age range? An 11-year-old and a 4-year-old are very different developmentally. Is there a specific age we are talking about?

Todd Williams:
Yes. I do not believe a four-year-old would ever be in a place where this would be a useful strategy. However, I think we have to leave it open when we refer to a child—it is anyone 17 years of age and younger. Whether or not it is the parent or guardian who makes the phone call and/or the child is case dependent and age dependent. There are a lot of things that come into play on whether or not we believe it is better suited for the child or better suited for a parent or guardian to make the phone call.

Assemblymember Nadeem:
As you mentioned in your presentation, two consents, two factors, lead to consent of the party. What are those factors, and what is the one-consent factor?

Todd Williams:
Two-party consent or all-party consent—as it is known otherwise—is basically stating all people who are on the phone call must consent to the recording. This does not work in these cases because obviously, if we told a suspect when we were making a phone call, Hey, we are going to record this conversation. Are you ok with that? They are not going to make any admissions on the phone or they are not going to be truthful. That is what we are on—that is what we are looking for: the truth. One-party consent is basically stating the parent, or guardian, or the victim themselves are able to consent to the phone call being recorded.

Chair Miller:
I would like to clarify for everyone the one-party, two-party issues, are not just specific to this bill or this issue. It is anytime we are on the phone, for any reason, recording no matter what it is.

Assemblymember Orentlicher:
I think I am pretty clear on your concerns. I am having trouble going from your concerns to the bill language. Let me give you a couple reasons why. You have talked about the practicalities of getting the warrant. You might have to call the judge in the middle of the night, but all the examples are pretextual calls carefully planned over a period of time, which would seem to give you opportunities to get to a judge in normal working hours. You have also talked about the standards for getting a warrant, and I looked at those in NRS 179.470. They do not look as onerous as you have described, but maybe you are describing how they are applied rather than how they are written. I appreciate there can be differences, but if that is the problem with NRS 179.470, I would expect you to have a bill saying let us tweak or revise these requirements for a warrant rather than getting rid of a warrant altogether. Could you elaborate on why we need to go as far as you want to go, rather than something more respectful of criminal due process rights?

Peg Samples:
I am not sure if A.B. 275 is going so far. As Detective Williams has testified, this is already a well-established legal investigation process; we just want to record these conversations in the future. I will say, I do fully respect the defendant's due process rights as every prosecutor should and does. The main thing, though, is we need to think about a victim's rights. Victims—now pursuant to our *Nevada Constitution*—have rights under Marsy's Law. I have seen these cases go to trial, and I have seen the victim be cross-examined, not only on whether the abuse happened, but when they have engaged in one of these conversations with the defendant where the defendant has made admissions. They have been cross-examined about their recollection of that phone call. I do understand it is a balance between victims' rights and defendants' due process rights, and that is why this bill is very narrowly drafted and only applies to cases involving child sexual abuse.

Assemblymember Orentlicher:
I appreciate it is narrowly drawn in that sense, but I still have not gotten why you feel you cannot go to a judge at all. You do not think a judge has any role in this. That is what I do not get.

Todd Williams:
As you stated, the language in statute states we must have investigated or tried every investigative step. Currently, the process of wiretapping or completing a wiretap is very costly. It takes months to set up with the U.S. Department of Homeland Security, and it monitors every phone call the suspect makes. Then there is a specific time it has to be monitored by a person and actually recorded at the time the phone call is made. I would like to say we could narrow it down to a specific minute or hour, but unfortunately, when we set these up, there are times when somebody is busy and cannot make it, or something has come up and we have to reschedule them. With the time it takes to get Homeland Security involved—which is the only agency I know of that is able to do this—they have to have a federal that they want to sink their teeth into as well, if that makes sense. There has to be something Homeland Security has an interest in; they do not just do it because we need them to. There has to be a federal nexus, and there is not always a federal nexus in these cases.

Assemblymember Moore:
I have a question about the wiretap warrant that you mentioned. You said you have to go through Homeland Security to get the wiretap going. Can you walk us through the process of obtaining a wiretap warrant?

Todd Williams:
I have not actually done a wiretap warrant. I will do my best to elaborate on it and what was used in our office. The statute states the district attorney must apply to either a district court judge or a Nevada Supreme Court justice on the necessities to a wiretap. Then there are a lot of stipulations in NRS that talk about what the justice must take into account when it comes time to actually grant the warrant. That is what I can speak about. I can speak about the difficulties with the actual execution of it, if that is what you are asking.

Assemblymember Moore:
I was asking about the process itself because earlier it was mentioned it is very difficult to get a wiretap warrant. I was curious to see what the actual process looked like, how long it takes. Is it the district attorney's office who decides that this must go through the district court judge or the Nevada Supreme Court justice?

Peg Samples:
Yes. It would probably be the district attorney who would decide whether it was a district court judge or a Nevada Supreme Court justice.

Assemblymember O'Neill:
We are not just talking about Washoe and Clark County where there are multiple judges and multiple district attorneys and assistant district attorneys. You go to White Pine, you will have one district court judge who actually covers multiple counties. You will only have the one district attorney and maybe a part-time assistant. I will admit I have been retired from law enforcement for 15 years, and when I was working cases—which included child abuse cases, sexual child abuse—we could plan on being every bit of four to five hours going through the affidavit, proofing it, getting it to the district attorney, having them make comments on it, getting the judge to read and sign off on it, and then it would usually be for a set time—the person did not answer the phone, was not available, and we would have to start all over again.

The difference now, particularly when I did it, it was hard-line phone calls where they were much easier to set up. We just used a suction cup basically on the speaker side. Now, the cell phones—and what that has added—is greatly complicated. I think that is the part where it has to have that federal, the Homeland Security, brought in to have the technical equipment to intercept the electronic transmissions.

Assemblymember Yurek:
This is primarily going to be for the district attorneys because I am hearing a lot of talk about warrants, and as a prior law enforcement officer, I have actually sat on wire intercepts and have undergone the challenges and the logistical issues I think are being discussed by my colleagues on the dais today. To preface this—and I am hoping maybe you can speak to it a little bit more to address some of these concerns—we certainly all respect and want to honor the Fourth Amendment and people's right to be free against unreasonable searches and seizures. Certainly, the preference or the idea that usually under most circumstances, there would be a warrant that would be obtained under circumstances where you are trying to obtain criminal evidence against an individual to be used against them in court. However, despite that preference, there are well-established and delineated exceptions to the search warrant requirement, one of which I understand to be one-party consent phone calls.

This issue has been addressed and established by our United States Supreme Court, indicating that where an individual is subject to this sort of one-party consent recording, the admissibility of that evidence is absolutely okay, even absent a search warrant. An individual who is on the phone has what I think the courts refer to as a "diminished expectation of

privacy." When you are on the phone with another individual, the government is not intruding any more into that conversation to obtain information than that which the individual has already voluntarily provided. Can you address the issue of the well-delineated exceptions and how the one-party consent plays into this?

Peg Samples:
Our United States Supreme Court has said one-party consent statutes do not violate a privacy right or the Fourth Amendment. As this Committee knows, state legislatures can give more protections, but not fewer protections than the *United States Constitution*. That is why Nevada is able to make ourselves a two-party consent state along with—I think Detective Williams said—only nine other states that do. Assemblymember Yurek, you are absolutely correct.

Assemblymember Nadeem:
For better understanding, in the case of sexual abuse of a young child, how does the child communicate on the phone, and why is the suspect going to say things that are going to expose him in the phone conversation?

Todd Williams:
A lot of times they do it in hopes of not getting in trouble. Whether they own that and acknowledge they victimized the child in hopes of—like I said in the previous case—almost guilting the child into not wanting them to further disclose to law enforcement. Typically, we use these in cases where the suspect has not been notified or tipped off that law enforcement has been involved. I think that probably best answers your question.

Assemblymember O'Neill:
From my own personal experiences listening in on phone calls, it would be very often. The offender subject would say something like, Julie, if you say anything, we will not be able to go get ice cream anymore. This is a personal secret between you and me and how much we care for each other, and we do not want anything to get involved. As was said, guilt the child through this coercion. It is those inflections, the tones, the way it is even delivered, and the timing of the delivery of the message to the child—that care shown by them. It is so important, I think, in recording it instead of just taking notes. As has been said before, it also protects the subject for the defense. It is a true and accurate record. Does that answer your question?

Chair Miller:
These days, how many cases do you find where the predator has gone after the child verbally over the telephone versus other means? We know children and youth are communicating through social media, through video games, through online or Internet. How much is actually verbally speaking on the phone versus those?

Todd Williams:
I want to clarify your question. How often do they make admissions on the phone? Is that what your question is?

Chair Miller:
Just in general, reaching out, communicating, whatever term you want to use. I am looking for how much is verbal communication over the telephone versus any other form of texting or communicating through the video games, social media, anything online or Internet-based.

Todd Williams:
I can say in today's society, everyone—I think the last statistic I looked at was 90 percent of Americans—use their cell phones. Whether we are investigating juvenile-on-juvenile offenses or a juvenile on an adult case, cell phones—I cannot even tell you the last time it did not play a part in the case, whether it be text messages, videos that were shared—there is always some kind of nexus with electronics and cell phones. It is just so common.

Chair Miller:
Can you tell me the number of cases or investigations we have that are based on verbal communication over the cell phone or landline or any phone versus other means of communication, meaning social media, video games, Internet, texting?

Todd Williams:
No. I cannot tell you that statistic. I can tell you usually these cases involve actual physical, in-person contact, where a crime was committed or is alleged to have been committed. Then we use this tactic to find the evidence, exculpatory or inculpatory evidence. Whether or not they had conversations prior to that incident on the phone is not always the case. Oftentimes, the victim will have disclosed something to the non-offending parent, and the parent will separate the two of them, whether the suspect actually understands why or why not. There is that gap there, and then the only way they are able to communicate is through electronic means.

Assemblymember Roth:
I want to take a step back and make sure I am understanding the intent of the bill. This is not a wiretapping bill. This is to allow recordings of phone calls without a warrant. Can you explain—outside of the wiretapping statute because it does not amend that statute—why not allow for one-party consent of these phone calls with a warrant?

Peg Samples:
The way the laws read right now, I am not sure if a judge, outside a wiretap warrant request, could legally grant a law enforcement officer the right to record a phone call because Nevada is a two-party consent state. The way law enforcement gets around the two-party consent state rules now is by getting that wiretap warrant, not a regular warrant.

Assemblymember Roth:
What we are trying to get at, or the concern here is, this takes these phone calls, which can be sweeping—there could be all sorts of private information that is brought up on these phone calls—outside of the warrant requirement. I am trying to understand, is there a way to

narrowly tailor this so a warrant is still required; to amend the statute so we are still ensuring people are protected, that there is judicial oversight into one of the most invasive things a government can do instead of just completely taking this outside of the warrant requirement?

Peg Samples:
Probably, but I would also note, if this bill passes and we are allowed to record these conversations in the future, the bill is narrowly tailored just to apply to child sexual abuse cases. But if we are going to admit that in court, we still have the normal rules of evidence. If things are talked about that are legally irrelevant or are inadmissible on other grounds, then that would be the subject of litigation and judicial oversight.

Assemblymember González:
In reading the bill, it does not define electronic communication. I was curious what the intent around that is. Does that include a Facebook phone call? An Instagram video message? Can we talk a little bit about that?

Todd Williams:
Yes. It would be all recorded voice conversations, if that is the easiest way to put it. Phone calls, Facebook phone calls, Instagram phone calls, all of the above that are voice to voice.

Assemblymember González:
Would this include video? Because all of those you mentioned can video record as well.

Todd Williams:
The way we utilize the recording, or how we plan to use the recording, is actually like an audio recorder, so it would not capture any actual video.

Assemblymember Orentlicher:
I was going to ask what Assemblymember Roth asked about. The judge for recording. It did sound like you said that would work for you if we changed the law to just allow you to get a recording with the warrant, and then you would not have to go to Homeland Security and have an expensive wiretap. Did I hear that right?

Peg Samples:
I am not sure because the law, as written, now says it is illegal to record. There is no provision except for the wiretap, even with judicial intervention or even with a warrant granted by a judge. Our laws, as written, still make Nevada a two-party consent state. Like I said, the only exception is with the wiretap warrant.

Assemblymember Orentlicher:
I appreciate that, but could we see a conceptual amendment that said, Please give us the authority to get a one-person consent recording with the approval of a judge. We could have that conceptual amendment. Is that correct?

Assemblymember O'Neill:
Not being an attorney, not even practicing, not playing one, having to try to stay as far away from the legal system since I retired in law enforcement, I would imagine that would be a better question answered by the Legislative Counsel Bureau Legal Division. I could give you the set answer: in the Legislature we can do anything we want and let the courts figure out later if it is appropriate or not. We have done that in the past. We have been wrong, and we have been correct in our actions. That is a very abstract theoretical question I do not think I can answer properly for you.

Chair Miller:
I do appreciate your support of the three-branch system and the separation of powers. We will close our questioning and open it up for testimony. Starting here in Carson City, I will open it up for testimony in support of A.B. 275.

Jennifer P. Noble, Chief Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
I am testifying in support of A.B. 275 on behalf of the Nevada District Attorneys Association. I also sit before you as an appellate attorney. This has been my area of practice, specifically constitutional criminal law in the appellate setting, for the last 13 years. Part of that is being familiar with the Fourth Amendment, those fundamental protections, and the well-established exceptions to those fundamental protections. One of those in one-party recording states is one-party consent recordings, with the rationale being when you make a phone call to somebody else, there is no additional government intrusion because you are voluntarily talking to another person with no assurance that this is a private conversation any longer. This is why 40 states allow what we are asking you to do today.

The alternative to this is to have jurors continue to rely upon the notes the officer takes during these conversations. This information, these conversations, are getting to the jury, but through the filter of law enforcements'—and I am sure they make their best efforts to be objective—memory and their notes. That is the information; those are the statements that are getting in front of juries.

What this bill does is, it protects the defendant and it protects the prosecution. It makes sure the best evidence is getting in front of that jury and there is no filter about what statements the defendant made. We are not talking about tapping someone's phone without their consent. What we are asking for is the ability to record conversations with the consent of the victim, their guardian, or their parent, with their consent on their end. What we are asking for is an exception to Nevada's two-party recording statute for this narrow purpose of child sexual abuse cases. I urge your support of this bill.

Jason Woodard, representing Nevada Sheriffs' and Chiefs' Association:
We are in strong support of this bill. What this bill does is, it enhances an investigative tool to be used by investigators in cases that are wrought with challenges. These cases often involve delayed reporting, the lack of physical evidence, multiple offenses by the offender

upon the victim, and the offender is oftentimes a caregiver known to or trusted by the victim. These investigative tools—recorded pretextual phone calls—are used in 40 states, one of those states being California. California is a two-party consent state; however, they have long had a law enforcement exemption that specifically allows them to record these phone calls. Pretextual phone calls are used on a daily basis by investigators here in Nevada; the only difference is, they are not currently recorded. Recording these calls is the single most effective way to accurately depict the statements made by the offender in their own voice, tone, and inflection. Let us not forget the offender always has the opportunity to not talk, not answer the phone, or to terminate the phone call.

I can attest as an investigator of these cases—also as an instructor in investigations and a 26-year law enforcement veteran—to the effectiveness of these pretextual phone calls. The most significant thing about these pretextual phone calls is they also give an opportunity for the victim and their family members to take an active role in the investigation in seeking justice for the wrongdoing this offender has committed upon them. We strongly support this bill, we thank Assemblymember O'Neill for bringing it forward, and we would ask you do the same.

Joshua Martinez, Captain, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I want to echo many of the statements made by the prior speakers. This would be another tool for us in our investigative toolbox when we investigate these heinous crimes. We ask your support of A.B. 275.

Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson:
We want to thank the sponsor for bringing the bill. Unfortunately, all law enforcement agencies must deal with these types of cases, and this legislation would be helpful in those investigations. We agree with everything said by the Nevada Sheriffs' and Chiefs' Association and the Nevada District Attorneys Association. We are in full support of the bill.

Chair Miller:
Is there anyone else wishing to provide support testimony here in Carson City? [There was no one.] Is there anyone in Las Vegas? [There was no one.] Is there anyone on the phone who would like to testify in support of A.B. 275?

Eva Kilamyan, Private Citizen, San Diego, California:
I have been a prosecutor in San Diego prosecuting child abuse cases for 11 years. I am calling strongly supporting this bill. As someone who has used these recorded phone calls, I can provide some insight from my end on some things that are missed in a report that we can get in a phone call. Often, there are nuances in phone calls that can be missed. For example, if someone is saying I am sorry in a phone call. I am sorry can mean I am sorry for abusing you, but it could also mean I am sorry that you are feeling hurt. These nuances are difficult to capture in writing, the same way they would be in a recording you can listen to over and over to determine what the person really meant when they said something. Oftentimes, phone calls

can also have various nuances in them that you would need to listen to over and over to understand what somebody meant, especially in complicated cases where phone calls can take 45 minutes or an hour. This has been used many times in my cases, and I have achieved very favorable results based on being able to record these phone calls.

Chair Miller:
Are there any other callers who would like to testify in support of A.B. 275? [There was no one.]

[Exhibit E was submitted in support but not discussed and shall become part of the record.]

I will open opposition testimony, beginning here in Carson City.

Angela Knott, Deputy Public Defender, Legislative Liaison, Washoe County Public Defender's Office:
We are in opposition to A.B. 275. We all agree the best interest of the child should be our priority, but this bill risks placing children in a harmful position where they are forced to relive traumatic experiences during the middle of an investigation and be used to incriminate their parent. That seems like a lot of pressure for a child, especially a child who probably just wants to please an authority figure like a police officer or their other parent. I cannot think of a scenario where I would put my child in that position. The potential for abuse under this provision is alarming. Without the requirement for probable cause or judicial authorization, this bill could lead to overreach and surveillance that targets innocent individuals. It fundamentally shifts the balance away from protecting individual rights and toward unchecked government power. This is not the society we want to build.

The preexisting exceptions to warrantless interception are situations where there is imminent threat to life and fit into the exigent circumstances exception, like when there is a hostage situation. The same cannot be said for A.B. 275. The example used by the presenters involves detectives with the victim and the parent. They are in the middle of an investigation. They can use that probable cause to get a warrant. The child is not in immediate danger and requiring a warrant is appropriate. A warrant ensures a neutral magistrate agrees there are sufficient facts to justify this privacy intrusion. Any burden to law enforcement in obtaining a warrant is justified because of the constitutional protections given to all persons. For this reason, we must oppose A.B. 275.

Paloma M. Guerrero, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
If law enforcement has probable cause someone is a suspect of sexual abuse against children, then they can apply for a warrant. Judges exist for a reason, [unintelligible] an important check and balance in order to make sure law enforcement is not conducting surveillance without accountability. The neutral judge is the guardrail here, and judges are on call. They take warrant calls at all times, even at two in the morning. Two-party consent ensures law

enforcement justify any sort of surveillance actions before a judge. Two-party consent protects everybody. The case they gave from Washoe County, they got their conviction without this law change. Allowing one-party consent risks rampant abuse and overreach. Recordings can be selective or misleading; individuals can manipulate conversations.

This could be weaponized not only in criminal proceedings, but in family law cases; misused in divorce proceedings and child custody. In those cases, the other parent can make an allegation against the other parent, and then law enforcement can invade their privacy based upon nothing but dubious, unsubstantiated allegations. That is why warrants are important. Again, the judges are the guardrails here. We all want these types of crimes to be prosecuted, but we should not tear down the Fourth Amendment when law enforcement can easily get a warrant. We are here to write laws, and we can absolutely change the law to give law enforcement the power that they want here, but with the protection they get a warrant first.

Kaylah Maese, Civil Rights Analyst, American Civil Liberties Union of Nevada:
Similar to reasons given by the Washoe and Clark County Public Defender's Office, the ACLU [American Civil Liberties Union] of Nevada also opposes A.B. 275.

Tonja Brown, Private Citizen, Carson City, Nevada:
We are in opposition of this bill. It is an overreach. I know of two instances where during divorce proceedings the child was used, tore the family apart. I can tell you that as the years go by, the children become adults. They were told they tried to correct the situation and corrected injustice, because the mother had instilled this fear into their lives. It destroyed everybody and innocent people went to prison. So no, please do not pass this bill.

Chair Miller:
Not seeing anyone else here in Carson City, and I do not believe I see anyone in Las Vegas, is there anyone on the phones who would like to testify in opposition to A.B. 275?

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
I want to echo my colleague's opposition to the bill.

Chair Miller:
That will conclude our testimony in opposition.

[Exhibit F was submitted in opposition but not discussed and shall become part of the record.]

Is there anyone here in Carson City or Las Vegas who wishes to make testimony in neutral on the bill? [There was no one.] Is there anyone on the phone who would like to testify in neutral to A.B. 275? [There was no one.] I will welcome the presenters—our bill sponsor had to leave—back for any final brief remarks.

Todd Williams:
I would like to state one thing: Nevada peace officers have been pushed for transparency for a number of years. Body camera recordings, releasing video footage. That is all we are trying to be here, more than anything, is to also be transparent when it comes time for court. We understand there could be inculpatory evidence and exculpatory evidence gained in these phone calls, but I believe it serves everyone, and it is a win-win for everyone to record these phone calls and make it admissible in court.

Peg Samples:
Going back to A.B. 228 of the 81st Session, sponsored Assemblymember Miller—which was passed in the 2021 Session, I believe this legislation furthers both goals of child advocacy centers in Nevada, which is to investigate and help children recover from abuse and neglect to hold perpetrators of abuse and neglect of children accountable.

Chair Miller:
Which bill was it I sponsored again?

Peg Samples:
Assembly Bill 228 of the 81st Session

Chair Miller:
What was A.B. 228 of the 81st Session?

Peg Samples:
Assembly Bill 228 of the 81st Session defined what a child advocacy center is and also the goals of a child advocacy center. I know you know we were the last state in the nation to define child advocacy centers in our statutes.

Chair Miller:
I remember that bill. I do not remember numbers, but yes, I carried that bill for a former assemblymember.

I will close the hearing on A.B. 275. Before we move on to public comment, we do have a bill draft request (BDR) introduction, BDR S-868. I am asking for the request for it to be turned into a bill and introduced.

BDR S-868—Makes an appropriation for a forensic DNA testing program. (Later introduced as Assembly Bill 473.)

ASSEMBLYMEMBER MARZOLA MOVED TO INTRODUCE BILL DRAFT REQUEST S-868.

ASSEMBLYMEMBER GONZÁLEZ SECONDED THE MOTION.

Are there any additional questions? [There were none.]

THE MOTION PASSED. (ASSEMBLYMEMBERS GRAY AND LA RUE HATCH WERE ABSENT FOR THE VOTE.)

We will move to our final agenda item, which is public comment. I will open public comment in Carson City for anyone wishing to make public comment.

Tonja Brown, Private Citizen, Carson City, Nevada:
I know a few weeks ago Assembly Bill 63 was brought to your attention. That was dealing with—and there was some discussion about—compensation for those who have passed away posthumously. Senate Bill 66, I had brought to you and mentioned as well. That was dealing with the factual innocence, posthumous petition. Some of the discussions that were being concerned, there was not really a whole lot of answers. Recently, on March 12, during the Veterans in Politics talk show—I would ask that you go and review it starting around minute 25—in which Nevada former retired Supreme Court Justice Cherry discussed wrongful convictions. I found it interesting because they were asked about wrongful convictions and why, if a prosecutor withholds exculpatory evidence, why they are not they being punished? Well, he basically says that prosecutors, district attorneys, will not go after district attorneys and it is left up to the State Bar of Nevada, who does the disciplinary action. Unless a law is created to disbar them, they are going to continue to get away with it; continue to practice; continue to go on to be a judge, a district attorney, Supreme Court justice. Should something come up with the State Bar, perhaps something like this could be added to the bill or for the 2027 Legislative Session. Please consider that if you are sitting on the Joint Interim Judiciary Committee. Again, think about what I have brought to you. I will keep bringing it back, but please go and listen to it. It is fascinating. They bring up the Fred Steese case, everything, and how far the district attorneys go to protect their own. Nobody is held accountable, and the State Bar will not go up against their own as well.

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Chair Miller:
Is there anyone else here in Carson City or Las Vegas? [There was no one.] Is there anyone on the phone who would like to provide public comment?

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
I am the sister of Thomas Purdy, who was murdered by Reno police and the Washoe County Sheriff's Office. My definition of transparency does not equate to more tools to violate people's constitutional rights. I would like to add to what Ms. Brown said about the Veterans In Politics interview with retired Justice Cherry and his response to the question about wrongful convictions. It makes sense as to why the Washoe County District Attorney's Office and the Conviction Integrity Committee (CIC) have protected that false conviction over the years. The prosecuting attorney who withheld the exculpatory evidence in the Klein case is protected to this day. The CIC unit is just a dog and pony show. Nobody has been exonerated through the Washoe County CIC unit. I am still awaiting my third public records request to get an update on how many cases they have actually reviewed, which is one true review and one that got no fair review—the Klein case—because *Brady* violations were alleged. I would like to urge you all to go watch that interview with Justice Cherry. It is very telling, and it really connects the dots as to why you cannot get any justice in Washoe County.

Chair Miller:
Are there any other callers wishing to provide public comment? [There was no one.] I will close public comment. That concludes our business for the day. We are adjourned [at 9:20 a.m.].

RESPECTFULLY SUBMITTED:

_____
Nicholas Fischer
Committee Secretary

APPROVED BY:

_____
Assemblymember Brittney M. Miller, Chair

DATE: _____

EXHIBITS

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 275	C	Assemblymember PK O'Neill, Assembly District No. 40	Proposed conceptual amendment
A.B. 275	D	Assemblymember PK O'Neill, Assembly District No. 40	PowerPoint presentation titled "Child Crimes Bill Change to NRS 179.463 (Recording Telephone Communication)"
A.B. 275	E	Summer Stephan, District Attorney, San Diego County District Attorney's Office	Written testimony in support
A.B. 275	F	Theresa J. Yancy-Benson, Private Citizen, Las Vegas, Nevada	Written testimony in opposition