

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-third Session
March 31, 2025**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:04 p.m. on Monday, March 31, 2025, in Room 1214 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 6 of the Nevada Legislature Hearing Rooms, 7120 Amigo Street, 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 Edgar Flores, Vice Chair
Senator James Ohrenschall
Senator Roberta Lange
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator John Ellison

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Michael Scully, Committee Counsel
Jan Brase, Committee Secretary

OTHERS PRESENT:

Scott Coffee
Angela Knott, Washoe County Public Defender's Office
Paloma Guerrero, Clark County Public Defender's Office
John T. Jones, Jr., Nevada District Attorneys Association
Kelly Crompton, City of Las Vegas
Tia Smith, ACLU of Nevada
Jason Woodard, Nevada Sheriffs' and Chiefs' Association
Jennifer Noble, Nevada District Attorneys Association

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Thomas Morley, Nevada Press Association; *Las Vegas Review-Journal*
Christopher Ries, Las Vegas Metropolitan Police Department
Jason Walker, Washoe County Sheriff's Office
Cyrus Hojjaty

CHAIR SCHEIBLE:

We will open the hearing on Senate Bill (S.B.) 341.

SENATE BILL 341: Revises provisions relating to criminal procedure.
(BDR 14-119)

SENATOR JAMES OHRENSCHALL (Senatorial District No. 21):

I want to thank you for hearing S.B. 341. I am fortunate to have Scott Coffee to assist me in presenting this bill. He is now an attorney in private practice. He recently retired after 30 years at the Clark County Public Defender's Office, most recently as chair of the homicide team. He currently practices in that same area—homicide and death penalty cases. He has tremendous familiarity with the subject matter in S.B. 341.

SCOTT COFFEE:

Senate Bill 341 is an attempt to quantify something that was adopted by the Nevada Supreme Court in 2023 and went into effect in February 2024. That would be ADKT 0581 ([Exhibit C](#)) which addresses audiovisual testimony.

There is a potential for amendment because there are some practical difficulties with the ten-day deadline, but as written S.B. 341 seeks to clarify when audiovisual testimony can be used. We hope the members of the committee are aware of the importance of preliminary hearing in Nevada. Our trial rates are vanishingly small. We go to trial in Clark County less than 0.5 percent of the time. Actually, it is quite a bit less than that. It means a preliminary hearing is the only opportunity that we have to see witnesses, see how they will testify, actually put them under oath and take testimony.

About 20 years ago, this body adopted *Nevada Revised Statutes* (NRS) 171.1975 which allows for the use of audiovisual testimony. In all candor, it is not used that often. It provides for audiovisual testimony when someone resides more than 100 miles from where the testimony will be taken. It is also allowed if they have some kind of medical situation. There is a third provision for good cause. Now, I do not know exactly what good cause means.

I am not sure anyone does. What happened during COVID-19 is that good cause provision started to get used a bit loosely, and we had people that would be testifying audiovisually. If you have any question about whether audiovisual is the same as being in person, just take my testimony at face value. I would much rather be in the room with you in Carson City talking to you directly. As nice as this facility is and as good as the audiovisual testimony is, I would much rather be in the room in Carson City where I could answer questions and look at people directly. You could get a feel for what I have to do and say. I will tell you that is with a state-of-the-art situation.

When we are in the courtroom, I have done depositions in capital cases by audiovisual means when we have witnesses who are sick or who are unable to travel. It is inevitably a mess. Part of the reason it is inevitably a mess is that as good as the audiovisual technology is, it is not perfect. It is hard to gauge somebody's expressions, it is hard to gauge someone's reactions and the formality goes away. In a preliminary hearing, generally, you have some kind of formality where a person has to come in, stand up in front of people and say something. It is very different when they testify from their own space with other people, children or dogs in the room. We have seen all of this. So essentially the goal of this bill is to limit audiovisual testimony to when it is actually necessary—when someone is sick, when someone has a legitimate medical excuse, when the distance makes travel impractical.

This bill helps resolve cases and not just by dismissal. It helps resolve cases on the ground level. When I represent a defendant, if someone tries to testify by audiovisual testimony, inevitably, what happens is the defendant will be concerned that the person may not show up for trial—and audiovisual testimony, by the way, may not preserve the testimony for trial because it does not meet the standards for the Sixth Amendment normally held for trial proceedings. It makes it difficult for defendants, for judges and for prosecutors to evaluate what the testimony is. With that in mind, it makes sense to require live testimony the vast majority of the time. Preliminary hearings are obviously scaled down. They are not a trial. If I have a preliminary hearing with 4 witnesses, it may be 20 witnesses at trial. We are not talking about a huge burden to bring these people in to give live testimony. But it is important for people to have a conversation. I do not know how many cases I have resolved with victims, victims' families and other people in the courtroom, including witnesses where we have the opportunity to talk with the district attorney (DA).

The provisions call for ten-day notice. I do not think that is practical with a 15-day set for preliminary hearing which a defendant is entitled to. I think Senator Ohrenschall would be amenable to amending the 48 hours as additional language. I think that clears up part of what we would be asking for. The underlying importance of this is to try to get live testimony whenever practical. It helps the system.

SENATOR OHRENSCHALL:

I have submitted a conceptual amendment ([Exhibit D](#)) that proposes amending the time to 48 hours.

SENATOR ELLISON:

I know that you are looking at doing the video and you would rather have testifiers in court. But what do you do when the courts are doing them in jail and the judges are in the courthouse? Would this create a problem? What if you are way out in a rural area and the only way you are going to get testimony is by video?

MR. COFFEE:

I do not think it creates an issue or a problem. There are provisions in the administrative order from the Supreme Court that allow for certain things to be done via audiovisual including status checks. There are situations where the attorney is from one of the major metropolitan areas but is appearing in a rural courtroom. The expectation is for preliminary hearings, which is a very critical stage.

In Nevada, a preliminary hearing is about as close to trial as we get in 99 percent of the cases. It makes sense to have the people in court, and the defendant has to be present for a preliminary hearing. I have never had a preliminary hearing where absent an agreement of the parties that a defendant was not present in the courtroom. That is managed right now without too much issue.

CHAIR SCHEIBLE:

I wanted to clarify a couple of things with this because basically the current state of the statute is that there are no deadlines or timing requirements for these affidavits to be filed. Is that correct?

MR. COFFEE:

That is correct. There are no timing requirements. The requirement is good cause. Inevitably what happens is people are scrambling the morning of a preliminary hearing. I understand and am empathetic to the fact that DAs sometimes get late notice about situations. But there is a provision that would not necessarily mean the case would be dismissed. If you miss this deadline, the State could ask for a short continuance, or I would assume the parties could agree to do the audiovisual testimony if they preferred that to a continuance. So it would not be a situation where a case would be dismissed. It would be a situation where we have notice, and we could actually look at whether someone is sick, is out of town or there is another situation.

CHAIR SCHEIBLE:

You answered my next question which is what the remedy would be for failing to meet these deadlines. Having also practiced in Clark County, having also done dozens if not hundreds of these preliminary hearings, I think it is important for a party to know—I also read this to apply equally to the prosecution and the defense—if either party intends to have a witness testify by audiovisual technology because the other side is entitled to know that before they come into court. It does absolutely change the way that you approach a witness.

I will get on my soapbox for a second and say that there's nothing more frustrating than being in court when an attorney tries to handle a proceeding that requires an in-person witness and then tries to do it over Zoom. The attorney is holding up papers and asking, "Do you recognize what this is?" Of course, they do not because it can't be seen on a screen. You need to be there in person. I appreciate that both sides need to be alerted to the fact that someone's going to be bringing in a witness via audiovisual technology. It looks like it does not provide a remedy.

As a defense attorney, if I get there in the morning and I find out that the State wants to utilize audiovisual technology and they have not filed the proper notice, this gives me a choice. I can either waive the notice requirement and go forward with the hearing, or I now have standing to say to the judge, "Look, I was entitled to know this 48 hours earlier. I am not prepared to go forward with audiovisual technology. That changes how I would present the witness with evidence or how I would cross-examine them. I am entitled to my 48 hours to prepare and get the preliminary hearing reset." Is that the idea?

MR. COFFEE:

That's exactly the idea. You put it very eloquently, and that is exactly the concern we are trying to address here. Court is a formal proceeding just as this body is a formal proceeding. When we take the formality out of it, you get different answers, and you get different approaches. People do not take things as seriously, and that becomes a concern. We've all seen cases where witnesses go out of their way to make things up—for lack of a better description. It does not happen often, but it does happen, and it is a lot easier to see it if you have the person in the room with a judge, a prosecutor and a defense attorney looking at them.

CHAIR SCHEIBLE:

I guess this does not change the current status of the law in terms of there not being a mechanism for the opposing party to object to the use of audiovisual technology. It also does not require the judge to make a decision about whether or not to allow this technology. I guess the judge gets to make the good cause determination. Other than that, it is just a notice. It is not a motion requesting permission. Is that correct?

MR. COFFEE:

That is the way that I read the conceptual draft that was put together and the statute as it currently stands. I think that is correct.

ANGELA KNOTT (Washoe County Public Defender's Office):

We fully support S.B. 341, especially with the amendment of the 48-hour rule. We are already seeing this practice in Washoe County. We've had cases where the district attorneys are filing the notice and the affidavit ahead of time before the preliminary hearing. It is important to also note—I have had two preliminary hearings when the witness was presenting via audiovisual. Now the question is do we realize that someone else was present with the victim on the video? We had to have a whole conversation with the victim on the video about not conversing with another person who's offscreen. It is an issue, and we prefer in-person testimony, but if not, then give us 48 hours so we can prepare and we can have rules to follow.

PALOMA GUERRERO (Clark County Public Defender's Office):

The important part of this bill is really the notice piece. It is an entirely different strategy when we are cross-examining a witness in person versus audiovisual testimony, especially if as a defense, you are bringing in exhibits, other

documents or videos. It is a different process to do it if it is done through Zoom. It is really about preparation. Additionally, limiting the use to situations where it makes sense is important. When someone is testifying via audiovisual means, you can't read their body language, you can't assess their credibility properly, you do not know if someone else is in the room with them. Also, you do not know if they are reading their answers. I had a preliminary hearing where thankfully they were being pretty obvious about it. Every time I asked a question, they would look down and up when providing certain facts. We were able to cross-examine them, and it turned out that they had a phone that they were referencing and getting information. This is something testifiers are not allowed to do. It is something that would not have happened if they were in the courtroom. So we urge your support on S.B. 341.

JOHN T. JONES, JR. (Nevada District Attorneys Association):

We are in strong opposition to S.B. 341. I want to start off by saying, I believe even the presenters conceded that this is not something that is used very often. I think all of us prefer in-person testimony. I worked on the current version of this statute back in 2015. I do not know if Senator Hansen remembers, but he was chair of the Assembly Committee on Judiciary when we worked on this statute. Our position is that the current statute is not unnecessarily burdensome and is appropriate for all of the circumstances that I see as a DA.

But before I start, I want to point out that preliminary hearings are not meant to be miniature trials. A full and complete exploration of the facets of the case are reserved for a jury trial, not for prelim. I will point out that many states do not even require a victim or a witness to show up at preliminary hearings. Hearsay can be admitted. Others do not even require a prelim at all. But because Nevada requires victims and witnesses to testify not only at trial but also at a preliminary hearing, our position is we should make it as easy as possible to elicit their testimony, especially at these early preliminary hearings.

It is not clear to me whether or not the amendment addresses our first issue which is with the good cause language being removed in section 1 and section 2 of S.B. 341. There are reasons not contemplated by our statute where a person who resides within 100 miles of the courthouse or is otherwise healthy will not be in town. They could be out of town for work, on military leave, have family emergencies or vacations. We should leave it to a judge to determine whether or not these situations are valid and whether or not video testimony should be allowed. We should not remove the good cause exception.

Second, one of the jobs I have as DA is locating victims and witnesses, and sometimes it is difficult. I am not going to lie. This bill assumes that all victims have a fixed residence, a phone and are instantly responsive to our process servers and investigators. But I can tell you that they are not. I have had many a prelim where it is the night before and we have just located our witness and found out that they are in Indiana. So under this bill, I would not be allowed to call them at prelim. I disagree with the presenters of the bill saying this would allow a continuance. No defense attorney is going to request a continuance when they know one of my witnesses is in Indiana. This is going to lead to more dismissals.

Finally, Mr. Coffee, I believe, indicated that a defendant has to be present at a preliminary hearing. In fact, they do not. There's a case called *State v. Sargent*, [122 Nev. 210, 128 P.3d 1052 (2006).] In fact, it is important to note that a defendant may file a Sargent notice the day of preliminary hearing. They do not have to give the State any notice that the defendant is not going to be present in prelim. There is no reason to require a victim and a witness to file this notice 10 days or even 48 hours before a hearing when a defendant can waive their appearance the day of the preliminary hearing.

ACTING CHAIR NGUYEN:

You indicated that obviously a preliminary hearing is not the same thing as a trial. However, if you had a situation where there was a preliminary hearing and it was done by virtual means and later you could not find that witness, the victim or any of the participants, there is a process where you would be able to use that testimony at a trial. Isn't that correct?

MR. JONES:

Yes, as long as it is a sworn testimony and subject to cross-examination, we can use that testimony at trial with the judge's permission.

ACTING CHAIR NGUYEN:

So in that circumstance, you would never have the right to cross-examine that witness live and in person without holding up papers and exhibits as you could via audiovisual testimony. Do you think that is a fair and accurate opportunity to fully cross-examine a witness and to be able to use that testimony later in trial?

MR. JONES:

Actually, I do. There is no right necessarily at a preliminary stage to an in-person cross-examination. I would argue that under our current law, if a defense attorney feels that they are prejudiced by videoconferencing or video testimony, then they are perfectly within their right to request a continuance. The remedy at the preliminary hearing stage for issues like that is a continuance. I think the statute is unnecessary in that if a defense attorney feels that a video testimony in this instance is inappropriate, they can request a continuance and let the judge decide.

I would also like to point out that the Supreme Court has set these rules in ADKT 0581. I think Mr. Coffee indicated that this was his attempt to codify those rules, but I can tell you that what is in S.B. 341 goes well beyond what the Supreme Court codified in those rules.

KELLY CROMPTON (City of Las Vegas):

I would like to echo the remarks from the DA's Office. We are concerned about the utilization of discretion in determining whether good cause exists; therefore, we are in opposition to S.B. 341.

SENATOR OHRENSCHALL:

Directing everybody to the proposed amendment, I do believe that the 48-hour notice is something that comports with many other standards in practice. It is fair to both sides and is required for both sides.

MR. COFFEE:

The 48-hour notice is embodied in ADKT 0581. So while the opposition said that the bill goes well beyond ADKT 0581, I do not believe that it does. Absent a preliminary hearing and Sargent notice, the defendant has a right to be physically present at a preliminary hearing, period. I know of no exception to that. When we talk about Sargent notice, it is a very different situation. Sargent notice is a situation where you have got concerns about the identification or out-of-court identification and a defense attorney can unilaterally waive his client's presence, but that is a defense attorney, not the State.

We talk about how these are not miniature trials, but then in the next breath we hear that it might be used at trial. Obviously, that is the big concern here. Preliminary hearings are not mini trials, but we think audiovisual testimony is good enough, and doggone it if we can't find the person later, that should be

good enough for trial too. That is problematic. That is the question that Senator Nguyen asked, and it probably runs afoul of the Sixth Amendment. I think if we got to the point that we started doing that on a regular basis, you would see a lot of time in federal court with litigation pursuant to *Crawford v. Washington*, 541 U.S. 36 (2004) because you do have a right to confront and cross-examine your accusers.

In Nevada, because of the low trial rate, less than 0.5 percent, the only time that effectively happens is in a preliminary hearing. So I find it concerning when we minimize the importance of preliminary hearings. Any defense attorney I know realizes how important they are. I think prosecutors do, too. The chair of this committee was a prosecutor for quite some time. I think she recognizes the importance of preliminary hearings. To minimize this and say, "Let us just make it easy for everybody," disregards something very critical. That is that we have accused somebody of a felony crime—if we are having a preliminary hearing, that is what we are talking about—that will stay on the record the rest of a person's life. We want to make sure that it is done right. Doing it right means bringing people in to testify, not having them testify via cell phone, which is what this devolves to inevitably. So with that, I hope that you support S.B. 341.

CHAIR SCHEIBLE:

We have received two letters ([Exhibit E](#)) in opposition of S.B. 341. I will close the hearing on S.B. 341 and begin the work session on S.B. 142.

SENATE BILL 142: Revises provisions governing property that is exempt from execution. (BDR 2-707)

JERED McDONALD (Committee Policy Analyst):

I will read the summary of S.B. 142 from the work session document ([Exhibit F](#)).

SENATOR FLORES MOVED TO AMEND AND DO PASS AS AMENDED S.B. 142.

SENATOR OHRENSCHALL SECONDED THE MOTION.

SENATOR HANSEN:

We discussed this briefly before the hearing. I will be voting no because I think the dollar amounts are excessive. I am fine with the provision in it where we adjust things for inflation. But in my mind, when people have the amount of dollars left in their accounts that this bill currently suggests, they should be held financially responsible to pay their bills. I am a no on this bill, although I do think the adjustment for inflation is fully justified.

THE MOTION CARRIED. (SENATORS ELLISON, HANSEN AND KRASNER VOTED NO.)

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MR. McDONALD:

I will read the summary of S.B. 152 from the work session document ([Exhibit G](#)).

SENATE BILL 152: Enacts provisions relating to electric vehicle charging stations in a common-interest community. (BDR 10-941)

SENATOR HANSEN:

I had a chance to talk to the bill sponsor. Senators Krasner and Ellison and I met previously, but we had not seen the amendment. After seeing the amendment—ironically, I wish you would have left in part 1 [section 1, subsection 1]—now the amendment makes most of the concerns I had go away. So I am going to be a yes on this as amended.

SENATOR KRASNER:

With the amendment, I am now a yes on this bill.

SENATOR NGUYEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 152.

SENATOR FLORES SECONDED THE MOTION.

THE MOTION CARRIED UANIMOUSLY.

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MR. McDONALD:

I will read the summary of S.B. 241 from the work session document ([Exhibit H](#)).

SENATE BILL 241: Revises provisions relating to juvenile probation.
(BDR 5-493)

SENATOR HANSEN:

We briefly discussed the bill earlier and the question of creating a civil liability. As I understand it, if you cause \$10,000 in damage, part of the penalty is that you are going to make restitution, but you have not been able to get that done during the time that you thought you would. We are going to eliminate probation after the 18-month window. But the question of the restitution that came up—you and I discussed it briefly—as the bill currently is constituted, it becomes a civil liability. Now, at that point, I have a legal question. Does that mean the victim would then have to go to a court and essentially sue to get the bulk of his restitution? If the answer is yes, then that is a big red flag for me. But under the amendment from the public defenders, it says the juvenile court maintains jurisdiction. Now, how does that change the civil liability aspect of this?

SENATOR OHRENSCHALL:

The way I see cases now as a practitioner in juvenile court is that if let us say a child has finished all their orders and they've stayed out of trouble, very often I will see the juvenile court judge convert that child to what is called probation without supervision. They are technically on informal probation and are still trying to make payments toward that restitution.

So let us say a child steals your car and unfortunately gets in a car crash and there is \$10,000 of damage. The judge orders nine months of probation, classes, community service and restitution payoff. And during the nine months the child and their family have been able to make payments, but they've only paid \$2,000. At the nine-month point, the juvenile has finished all the orders and stayed out of trouble but still owes \$8,000. Now, under current law, what I see is very often in most cases, the juvenile judge will convert the child to probation without supervision. They still try to make payments. If as a twenty-first birthday gets closer—because that is when the juvenile court loses jurisdiction over that child—it does not look like they've made much progress on paying off the restitution they owe, then I will see that conversion to a

civil judgment. That is something that you could collect on against the child and usually their parent or guardian as well, depending on the judge's orders or how the civil judgment words it.

What I see this bill changing is when that same child who's done well on probation during the nine months finished all the orders and stayed out of trouble but still owes you \$8,000, [they] could have their probation terminated completely. The juvenile court would retain jurisdiction over the restitution. The debt they owe would not go away. It would still be eligible to be converted to a civil confession of judgment as their twenty-first birthday approaches. The effort to make you whole would not change, but there would be a realistic, achievable goal for the child for when probation could end. That is what I see as the benefit.

SENATOR HANSEN:

Do you see the amendment as a friendly amendment? Because it sounds like they are keeping the current system in place under the amendment.

SENATOR OHRENSCHALL:

I know that Washoe County worked with Clark County and the public defenders. I consider it friendly. I hope the rest of the committee considers it friendly. I know that everybody worked very hard to try to reach consensus on this.

SENATOR HANSEN:

My concern is that I do not want a victim to have to go to court to enforce a civil liability against somebody that did not pay the restitution. So if it remains the way the current law is—if the individual reaches 21 years of age, it automatically is converted to a civil liability. Is that still what will happen if this bill passes either as amended or without the amendment? What changes here? I am kind of confused.

SENATOR OHRENSCHALL:

I believe that that restitution owed even under the amendment could still be converted to a civil judgment. In terms of the victim and their family collecting and in terms of what has to be done, I believe it would be like any other judgment that you are seeking to enforce.

BRAD WILKINSON (Committee Counsel):

Neither the bill nor the amendment changes how restitution in the civil judgment works. It is just the period of probation that is affected. So NRS 62B.420 actually sets forth the kinds of actions that can be taken to collect a judgment.

Basically, now the victim, a representative of the victim, or a state or local entity that is responsible for collection can report it to collection agencies and request the court take appropriate action which would include ordering a driver's license suspension, for example, or contract with the collection agency directly to collect the judgment. So that is not being changed by the bill or by the amendment. That's just how it works currently and would continue to work.

SENATOR ELLISON:

... [Unintelligible statement] ...

MR. WILKINSON:

There really would not be any need to do that because the judgment would already be entered in a specific amount. At the time they determine and enter that civil judgment, the amount would be set.

SENATOR KRASNER:

Is it possible to ask a question of one of the members of the District Attorneys Association for a clarification?

CHAIR SCHEIBLE:

I do not think we have the district attorneys here who brought forward this amendment. I do not want to put our district attorneys on the spot who were not responsible for drafting this amendment, but we are going to try it anyway.

SENATOR KRASNER:

I still have concerns on S.B. 241, and I am getting concerns from members of the public regarding sexual assault. Say a 17-year-old rapes a 14-year-old. What happens in a situation like that?

MR. JONES:

In terms of juvenile court, I will point out NRS 62F.110 requires that if a juvenile is adjudicated delinquent of a sexual offense, they must be on parole or probation for a period of not less than three years. It is my understanding this

bill does not affect parole or probation for juvenile sex offenders at all. It would still be a minimum of 36 months.

SENATOR KRASNER:

Section 1, subsection 3, paragraph (a) says that, currently, a juvenile court shall not place a child on probation for a period of more than 18 months for each unlawful act for which the child is adjudicated delinquent. Let's say they first choke somebody and then sexually assault the person; currently, that would be two separate offenses where they would receive two different ...

CHAIR SCHEIBLE:

At this point, we are really getting away from the bill. Senate Bill 241 is about cases where there is restitution ordered.

SENATOR KRASNER:

I am asking about language that is changed in the bill. I can ask later. I could just vote no and ask him later.

CHAIR SCHEIBLE:

I do notice that the amendment does not include changing all of the "shalls" to "mays" to give juvenile judges discretion to allow juveniles to keep their driver's licenses, but I am guessing that was intentional.

SENATOR NGUYEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 241.

SENATOR FLORES SECONDED THE MOTION.

SENATOR OHRENSCHALL:

At the earlier hearing, I made a disclosure regarding a conflict on S.B. 241. I would like to make that same disclosure. After my conversation with the Legislative Counsel Bureau, I was told that I am allowed to go ahead and vote on this bill as long as I made that disclosure. I am just making that same disclosure about the conflict.

THE MOTION PASSED. (SENATOR KRASNER VOTED NO.)

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CHAIR SCHEIBLE:

We will close the work session on S.B. 241 and open the work session with a newly created consent agenda.

MR. McDONALD:

The following bills will be considered on a consent agenda: S.B. 203, S.B. 240, S.B. 256, S.B. 323 and S.B. 383. I will read the bill descriptions from their respective work session documents ([Exhibit I](#), [Exhibit J](#), [Exhibit K](#), [Exhibit L](#) and [Exhibit M](#)).

SENATOR FLORES MOVED TO AMEND AND DO PASS AS AMENDED S.B. 203 AND S.B. 240.

SENATOR OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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SENATOR FLORES MOVED TO DO PASS S.B. 256, S.B. 323 AND S.B. 383.

SENATOR OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SCHEIBLE:

I will close the work session and open the hearing on S.B. 361.

SENATE BILL 361: Revises provisions relating to criminal procedure. (BDR 14-341)

SENATOR IRA HANSEN (Senatorial District No. 14):

Senate Bill 361 deals with tracking warrants. As I am sure everybody here knows we have the Fourth Amendment which reads:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

So obviously, when they wrote that in 1789 and it was adopted in 1791, they had no idea about the changes in technology. What this bill really deals with is a Supreme Court decision in 2018, *Carpenter v. United States*, 585 U.S. 296 (2018)], in which the United States Supreme Court put some pretty strict limits on what government agencies can do when it comes to tracking you through all sorts of different electrical devices.

When I first heard about this, there was a technology that was new at the time called StingRay, which gave the government the ability to track you through your cell phone. What I did not know, and one of the things that was fascinating about learning about this bill, was how many new forms of electrical devices you have—for example, for those of you who walk around with one of those devices which tells you how many steps you take every day, [that] is a device the government can use to track you. There are a bunch of those now. We have not updated the statutes dealing with this type of technology since 2013. Obviously with the Supreme Court decision in 2018 and with all of the advances in technology going on out there, we need to make sure that when these kinds of issues come up that we come down on the side of the people to make sure that they are protected from unreasonable searches by the government. That is really what this bill deals with.

I have to back up for just a second, though, because I love history. One of the fascinating things to ask is, "Why do we have the Fourth Amendment?" I have obviously read it numerous times, but I didn't know. Well, the reason we have it is because the king, when we were under the government of England, had a thing called a writ of assistance, which allowed essentially any government agent to search any part of you, your person, your houses, your property or your business, without any sort of oversight or a need for probable cause. They also had a thing called a general warrant. You'll notice we have in the Fourth Amendment warrants, but they are very specific. The reason is that the general warrant that the king would put out would allow unlimited searches. They did not have to say you have to go to this location and find and look for

this or this or this. Because of that, when the Constitution was passed in 1787, the people in the United States at that time refused to pass the Constitution. It was actually rejected between the Federalists and the Anti-Federalists. So what happened?

Well, to get it passed they had to add a Bill of Rights, which is a concept that goes back to English law. English law includes a written bill of rights. They do not have a written constitution, but they do have a written bill of rights. That concept was ingrained in the people of our nation at the time in order to get the Constitution. I assume you guys revere it. I revere it. I always carry a copy in my suit coat—got a bunch of them. It would not have passed otherwise. One of the key reasons was they did not want the government to have this sort of general warrant power anymore. So the Fourth Amendment was put in there to make sure that before a government agency, any government agency, could go and examine your person, houses, papers or effects, they have to have probable cause. That is the basis of this bill because obviously, since 1789 or 1791, the advances in technology have been phenomenal. Even doing this bill, I have been shocked by how many things are new even since 2013.

Sections 3 through 13 of S.B. 361 contain definitions for terms referenced in the bill, including tracking warrant, location information and electronic device.

Section 14 prohibits a governmental entity from tracking an individual without a tracking warrant and prohibits any location information obtained in violation of this bill from being admitted in any administrative civil, criminal or other proceeding in the State except to prove a violation of this law.

Section 15 authorizes a magistrate to grant a tracking warrant if a complete application is supported by probable cause to believe that the person is committing, [has committed] or is about to commit an offense or the location information sought by the tracking warrant will produce evidence of an offense. Section 15 also establishes requirements for an application or extension of a tracking warrant. Section 15 also requires a magistrate to seal applications for a tracking warrant or extension.

Section 16 sets the requirements for the contents of a tracking warrant and authorizes the applicant to request that certain provisions be included in the tracking warrant. The section also sets limitations on the time frame of a

tracking warrant and authorizes the magistrate to extend the time frame under certain circumstances.

Section 17 requires notification to the person who was tracked within ten days before any trial, hearing or other proceeding. Section 18 allows a person who is aggrieved by an unlawful search or an alleged unlawful search and seizure to move to suppress that information in court. Section 19 requires a magistrate to notify a person who is tracked not later than 90 days after the tracking warrant expired.

Sections 19 and 20 make the notice containing information related to the information collected by a tracker confidential unless it is subpoenaed by a court of competent jurisdiction.

There is one slight typographical error in section 14. Subsection 3 reads "a tracking warrant in the manner described in paragraph (d)." It should read paragraph (e).

SENATOR ELLISON:

You said there was a part in section 14 that the judge could seal the record. I can't find that.

SENATOR HANSEN:

I think it is section 18. There is a provision in there that the judge will seal these records unless there's a subpoena. If you have been spied on but nobody catches you doing anything wrong, that would be something that would not be released to the public, which is my understanding of that section of the bill.

SENATOR FLORES:

I understand the reference to the Supreme Court case makes a lot of sense for doing this now. Did you get any feedback from different law enforcement agencies? To what extent are we utilizing them, now? How often are we utilizing them? What's the process currently? I am just curious to know the backstory of what is happening presently

SENATOR HANSEN:

We have two main laws governing this NRS 179.475 that was last amended in 2013 that sets up when you are allowed to track electronic devices and communications. In 2013, we also amended NRS 707.600 through

NRS 707.650. Those are the current ones. This just builds on that, makes it a little stricter and also brings in more things that at the time were probably not considered electronic devices. It also makes sure we are following *Carpenter v. United States* because some of our language was probably a little bit loose. My understanding from talking to law enforcement people for the most part is that what I have in this bill is what they are trying to do already. This does codify it rather than just make it common law practice in the justice system.

SENATOR FLORES:

Do you know of any instances where third-party entities, organizations or nonprofits are being utilized? Not the exact agency themselves, but maybe a private investigator, et cetera and how that interacts with this bill and what the current law is now?

SENATOR HANSEN:

I don't know for sure. I was tipped off though that is how the law enforcement agencies get around some of these types of things. They'll deny it probably, but basically, by going through a third-party provider, they can get the information without obtaining a search warrant. That is pure speculation on my part at this point, but I have heard that. Section 14, subsection 4 reads, "Any location information obtained in violation of the provisions of this section, or evidence derived therefrom, is inadmissible in any trial, hearing or other proceeding." In other words, if they do get it through a third-party provider, it would be inadmissible in a court of law.

The bigger issue that you hit on though is it is getting, honestly, a little bit frightening how much the government can surveil everything we do already. In talking to some people about the federal laws on national security and stuff, George Orwell will be flipping over in his grave. The big brother that was spying on us back in the book *1984*—I mean, they have so many surveillance things that they do right now on the federal level. This obviously is just the state level. Maybe we are always playing catch up, but the idea behind this bill is to try to eliminate that kind of stuff happening and to make sure that everybody plays by the same rules if you are going to be potentially prosecuted for a crime in Nevada.

SENATOR KRASNER:

I thought the Fourth Amendment already covered tracking individuals by the government or government actors, including law enforcement. But my question

relates to section 14, subsection 2, paragraph (d), subparagraph 2 which states that "if the owner or user of an electronic device or user of a unique identifier is a child who is less than 18 years of age." I am wondering why you want to allow the government to randomly track children under the age of 18 with no probable cause.

SENATOR HANSEN:

Actually, section 14 does give the law enforcement community some reasons in emergency situations to not have to pursue getting the warrant. That is already state law in NRS 179.475. They already have that ability. They will undoubtedly testify today that there are situations where they have to act immediately, and they can't get a warrant. That is why you'll notice section 14, subsection 2, paragraph (e), subparagraph (3) reads "exigent circumstances make obtaining a warrant impractical." There are times when they are going to need to do that. As far as the user is a child who is less than 18 years of age, if you go behind that, you'll see that there are a series of things where they may need to do that. In other words, if a parent makes a request to have law enforcement check a child under the age of 18. There are a bunch of things addressing a lost device, if there is an emergency service that is required under NRS 707.630, or if the owner or electronic device or the user of a unique identifier gives the government entity informed written consent. As a parent, you are responsible for your minor child. This would be something I would assume that government could track simply by a written consent from a parent. That is my understanding of that provision.

SENATOR KRASNER:

To clarify, in section 14, subsection 2, paragraph (d), subparagraph (2), you are saying that the government can track somebody who's 18 years of age or younger only if their parent or guardian gives consent to the governmental entity to do so. Is that your intent with the bill?

SENATOR HANSEN:

I think that is my intent. It is a question I will have to ask the bill drafter. It does say if the owner or user of an electronic device or user of a unique identifier is a child who is less than 18 years of age, then the law enforcement people can do that without getting a tracking warrant.

It seems reasonable to me. I am assuming that if a parent contacts them and says, "Look, I got a juvenile who's giving me a hard time. Can you follow the

juvenile?" They would not need to go and get a probable cause search warrant under this section of law. Now, obviously, once they are 18 and they are on their own, then that would change.

SENATOR ELLISON:

It seems like that is the process that is happening right now. If the police need to find out if a criminal was within an area using a cell phone, they could take that cell phone and bounce it off different towers and find out where he is. Isn't that correct?

SENATOR HANSEN:

Yes, that would be correct if they get a search warrant for probable cause. You can't just randomly say, "I think that Ira Hansen is committing a crime, and we should just spy on him to see where his cell phone locations have been." If they, in fact, have probable cause that Ira Hansen is committing a crime, they need to go to a magistrate and submit that evidence to the magistrate. I as a person have a reasonable expectation that I do not have the—you know, I do not have to prove to the government that I am not committing a crime. They have to prove that I do, and they need to show the evidence to a magistrate, then get a tracking warrant under this bill. Then they can spy on my cell phone's locations or other electronic devices.

SENATOR ELLISON:

I did not know you had to get a warrant to do that. But I know in the case of murder and murder cases, kidnapping and some of these serious crimes that they can hit these towers and find out where they were and even follow the phone of the victim. So I did not know that they had to go to the process to try to get a judge to sign off on that.

SENATOR HANSEN:

Section 14, subsection 2, paragraph (b) does say the law enforcement community can respond to a call or request for emergency services by the owner or user pursuant to NRS 707.630. That is emergencies. Like you are saying, if there was a murder that was committed and they need to immediately track somebody that they think is involved in the murder, they are allowed to do that under emergency circumstances. However, the bill does have a provision that after 48 hours of pursuing that individual, they have to go to a magistrate and get a tracking warrant to continue that effort if, in fact, they have not been successful in arresting them previously.

SENATOR OHRENSCHALL:

My question is on section 14, subsection 2 and subsection 3 which talk about those situations where a law enforcement officer could try to get that tracking information without a warrant and where a peace officer:

Obtains location information without a tracking warrant in the manner described in paragraph (d) of subsection 2 shall, not later than 48 hours after obtaining the location information, apply for a tracking warrant that meets the requirements under section 15 of this act. If the application is denied, any location information, or evidence derived therefrom, is inadmissible in any trial, hearing or other proceeding.

It goes on and on. I just wanted to clarify. Is it your intent in section 14, subsection 3 that if—let us say law enforcement felt that they needed to track me without a warrant under subsection 2 if S.B. 361 passes—they find out I go to Jimmy's pool hall every night after work, and then 48 hours later, they apply for this tracking warrant and the judge denies it. Is it your intent that information that I go to Jimmy's pool hall after work every night not be shared with other law enforcement, not be something that they can pass on to other authorities? Does the information they got after the warrant was denied have to be disposed of, shredded or deleted?

SENATOR HANSEN:

That is an interesting question. Would they have to totally eliminate that? No, I think that could still be part of an investigation. However, at that point, because they have not given to a magistrate probable cause, they could not. Therefore, you have a reasonable expectation that they can't spy on you unless a judge has said, "You know what, this individual is hanging out at the pool hall. The evidence that the law enforcement community has presented to me as far as probable cause is sufficient to spy on him to see if, in fact, he is doing criminal activity." On the other hand, if they go and present their evidence to a magistrate and he says, "No, this is insufficient. This does not even rise to a level of reasonable suspicion. I am sorry, I am going to deny this search warrant," that does not mean that they can't continue to do an investigation. But it does mean that any evidence that they tried to gather prior to that would not be admissible in a court of law unless they gather additional information and can return to a magistrate who then says, "Now you have reached the basic status of probable cause."

CHAIR SCHEIBLE:

I want to clarify the devices that we are talking about. We're actually talking about two different types of devices, correct?

SENATOR HANSEN:

At least, yes.

CHAIR SCHEIBLE:

I mean two large categories. We're talking about devices that people already have in their possession that law enforcement wants to utilize to track them. But then we are also talking about the tracking devices that law enforcement installs on a suspect's car in order to track them.

SENATOR HANSEN:

Yes, that is already in law. Remember we passed that last session. I do not know—this does not directly deal with that as much as the current law does. They still have all those things. This adds kind of another tracking category to where they have any attempts to go through a—what would you call it—it is actually in the definition. So you'll have to pardon me. Some of this is over my pay grade as far as all the different definitions.

The term is unique identifier. You have stuff on you that right now, it will not even say Ira Hansen on it, but it might have number 345. This unique identifier is something that they can apply for, then find out that 345 is connected to Ira Hansen. Then they can do the process of obtaining a search warrant through that. But they have to at least start with that unique identifier and get that through the hurdle of probable cause in front of a judge. Then the judge will say, "Yeah, okay, whoever this guy with the number 345 is, you can go through that identifier." Then they go get that number or identification from the cell tower people and then get a search warrant to go after whoever this guy is by name.

CHAIR SCHEIBLE:

So in that example, if we are looking at a crime that was committed and the law enforcement agency knows where the crime was committed and when the crime was committed, but they do not know who committed the crime—which is, I think, a common scenario—it sounds like this bill would prevent law enforcement from pulling the data about, for example, 100 cell phones pinging off the tower of the victim's cell phone. This would prevent law

enforcement from getting the names of every single person whose cellphone was within the same cell tower radius as the victim because they would not have probable cause to believe that each individual person in the area was involved in the crime even though that list of people who were in the area might be helpful to develop a suspect.

SENATOR HANSEN:

Under that scenario, obviously, if there were 100 people that were at a Radio Shack and the Radio Shack was robbed by one person, they would have to come up with something. They could probably use that to begin an investigation. But as far as actually going into the data and then tracking the 1 person out of 100 that had been in the store that got robbed to literally track his movements—assuming it is him; could be her—then they'd have to reach a level of probable cause before they can go through all 100 cell phone records—as I understand it. I think that is current law anyway; that is not something unique to this bill.

CHAIR SCHEIBLE:

I know we will have law enforcement testifying here in a minute. But I have had cases where my clients have been at crime scenes and their phones have therefore pinged at those scenes. Sometimes they've focused on my client first, but in other cases, they have pulled cell phone data to determine that there were a whole bunch of innocent people there whose names I never get to see as defense counsel because they were not ultimately part of the suspect list.

Your intention here is—let us say I am a detective, and I know that somebody was murdered on the corner of First and Main Street at 2:00 p.m. on Tuesday. You would not want me—Detective Scheible—to be able to pull a list of all of the cell phones that were at the corner of First and Main Street on Tuesday at 2:00 p.m. and get a list of those names in order to start my investigation.

SENATOR HANSEN:

You know, honestly, I am not sure that is the intent of this bill. In the scenario you just gave, that would seem reasonable to me. We know of the 100 people that were near that street corner, 1 of them most likely was the one that committed the crime. I know the public defenders are going to talk about the bill and law enforcement. This may be a little over my pay grade. My intent is obviously to protect people to make sure that before they are investigated, the amount of randomness is eliminated as much as possible. You should be

completely free to not have the government going through your cell phone records.

Now, in a case where there are 100 people on the street corner where a murder occurred, that may be reasonable suspicion that would raise it to probable cause and say, "Okay, of the 100 people we know are in this location, we want to have a search warrant." I honestly do not know how the law enforcement currently handles this, but I do know there are laws governing how they do it. After that data has been sifted through—if they did get probable cause and a search warrant that would be broad enough to encompass 100 people who may have been near the crime scene—the 99 that had nothing to do with it would be able to have their records basically expunged. Then for the one individual that they think is the perpetrator, they would then be able to further follow that individual's records. That's my understanding. But I may be getting into the weeds in a field where I do not have the level of expertise to really explain it. So I got the public defenders, and I got the prosecutors here. So I am sure they'll say, "Hansen's way off on this, and here is where he is wrong." The bottom line to me is before the government commits a reasonable search, they have to have some level of probable cause. Now that we have so many different types of ways for the government to basically spy on us, we want to keep a lid on that as much as reasonably possible and make sure that when they do that, that those Fourth Amendment protections are preserved within all reasonable levels.

CHAIR SCHEIBLE:

I agree that we want to protect the Fourth Amendment and people's rights to privacy. You also started your presentation by mentioning that when the Fourth Amendment was drafted, we could not really imagine the kinds of technology that we would see today. However, caselaw, *Carpenter v. United States* included, has evolved to address all kinds of technology—certainly not everything but a lot of different technology. My question is about what hole does this address? What type of technology are law enforcement officers accessing without a warrant? Because I have never seen a pen, a trap and trace or a tracker done without a warrant.

Let's even, you know, take it to the full extreme of the argument and say they are bad actors. Let's say they are doing this for nefarious reasons. What is the practice where they are exploiting the loophole to say, "Hey, the Fourth Amendment does not explicitly say we need probable cause to do this search." What is it that they are doing?

SENATOR HANSEN:

I am not completely sure that any of the things that are in this bill are not currently practiced by them. What this does do is puts it in statute so there is a clear guideline for the courts and the law enforcement community to follow. I, literally, in the last week learned what a unique identifier is. Are these law enforcement guys misusing unique identifiers? I do not know. What I do know though is because of the constant evolution and technology, these unique identifiers can be used to track people; if they are going to track people, then I think we need to make sure there's a good reason they can use it. While this deals with just Nevada stuff, for me the bigger red flag is not in this bill but just the overall ability of the federal government to spy on us in so many different ways. What my bill is intended to do is to make sure we limit it as much as possible whether or not they are potentially currently misusing some of the things that are in this bill. I honestly can't say yay or nay; what I can do though is as these technologies evolve, we have in statute the guidelines to make sure that your Fourth Amendment rights are protected.

CHAIR SCHEIBLE:

That makes sense, and I do not like the government spying on me either. My last question is about unintended consequences. Something that we have not talked about, and I had not really thought about is other uses of the tracking technology. While we were sitting here a bunch of us got an AMBER Alert. That tells me that the government is utilizing some kind of technology to know where I am geographically because the AMBER Alert was for Fallon, Nevada, and I do not live in Fallon, Nevada. I do not have a home in Fallon, Nevada. I have been to Fallon, Nevada. Right now, I am geographically close to Fallon, Nevada. I concluded that is how I got that AMBER Alert. It seems that the government is also using this technology for the purpose of protecting the public and providing information. Does S.B. 361 adequately account for those other uses of location data?

SENATOR HANSEN:

My goal, obviously, is if there are areas that are not covered in the statute, I am totally open to amending all of this. I met with prosecution folks; they had a couple of things that they are going to mention in their testimony in opposition to the bill. So you know I am fine with that. Obviously, we do not want to say that whoever puts out an AMBER Alert may somehow be found guilty of violating the Fourth Amendment. I don't think so; the Fourth Amendment says

unreasonable searches and seizures. An AMBER Alert is not a search. It is more like a warning. I do not know if that would apply.

You are correct. There may be things in drafting the bill that may have been overlooked. If that is the case—it is also why we meet every two years—we can make corrections. Mr. Jones talked about a bill that was enacted ten years ago. The public defenders are trying to correct something that we had an agreement on with the public defenders. The public defender at that time was Steve Yeager from Clark County. We are always trying to fix statute. Maggie Carlton's old adage is, "Do not let the perfect stand in the way of the good." I think if I am going to err, I want to err on the side of protecting the people against unreasonable searches and seizures by the government.

As you and I know so well, Chair Scheible, the government has all the advantages in this. When you get right down to it, the government has the investigators, the prosecutors and the police force. If you are a poor indigent person, you are lucky to have a public defender who generally has at least 50 other cases. After viewing this while on this committee for eight terms, the one thing that came through loud and clear to me is we need to watch out. I want to have law enforcement do the best possible job they can, but there are a whole lot of people out there who are not financially able to get top rate attorneys. They do not know the law, and something as simple as the Bill of Rights is their only fallback position to protect themselves from the awesome powers of the state.

That is my spiel on this and the reason I am involved in this. I do not think the average person, even if they have committed some kind of offense, should ever be subjected to some sort of big brother government overreach where you are just overwhelmed by the forces and the finances and the investigation powers of the state. I think that is the reason the founders of our nation gave us the Bill of Rights. They recognize that the state—remember they were often against the state ... Everybody, the 56 men who signed the Declaration of Independence, literally signed their death warrants. If they had lost that war, they would have been hung, drawn and quartered for treason. These guys were pretty adept people—disproportionately lawyers I might add.

Anyway, I do not want to give an Ira Hansen TED Talk, but there is a factor, and that is why I am always very sympathetic to the public defender side of this thing. They do not have the glamour side. When the DAs prosecute a murderer

or rapist, everyone says "Yeah, go get them." But when public defenders do their part and find some issue that the state has not fulfilled its obligation to prove every element of a crime, then they are the bad guys because they got the crook off. But in our system of government, the state has the responsibility to prove every element of a crime. You never have to prove that you are innocent of a crime. I think we got to keep that in mind when we think about these kinds of things.

I am learning as I go. If I have said something in error, I hope the public defenders or the prosecution folks would be happy to come up and correct it. My goal in all this is not to try to sneak something through. My goal is simply to make sure as the technology evolves that we keep those protections in place.

Ms. KNOTT:

I am going to try to answer some of Senator Hanson's concerns with the back and forth. The first one being the concern that there's a murder and someone is pinging off cell phone towers. How can they get the information to start to get to these warrants? I only discovered a few weeks ago with Assembly Bill (A.B.) 172 there is something called administrative subpoenas, which is kind of a power of law enforcement to preliminarily get this information. They then use that information they are already getting to get the warrant.

ASSEMBLY BILL 172: Revises provisions relating to the disclosure of certain records stored on the Internet. (BDR 15-768)

I think what S.B. 361 is doing is trying to provide better guidelines for law enforcement. I do not think it is that difficult to go to a judge and ask for a warrant when you have a murder and you have some numbers and you say, "Look, one of these cell phones belongs to somebody. Can we get a warrant so we can look at those numbers and find out who they belong to?" From there the next process is to obtain any kind of warrants they need. This is not a difficult process. I think S.B. 361 is taking Supreme Court caselaw and the Fourth Amendment and bringing it into a statute so that everybody knows what we are supposed to do. The Washoe County Public Defender's Office litigates Fourth Amendment issues all the time as criminal defense attorneys. I think that is the majority of our practice—trying to fight law enforcement when we do not believe that they've done their job correctly. We support S.B. 361 because we believe it is just trying to help clear guidelines for everyone, not just for our

defendants or for us but also for law enforcement. I think that answers most of those questions unless there was another one pending.

Ms. GUERRERO:

The Clark County Public Defender's Office echoes Ms. Knott's comments.

TIA SMITH (ACLU of Nevada):

While I was listening to the hearing, I did a quick Google search, and I found some data I thought you all might be interested in. It is an article from February 27, 2025, in *Forbes* titled "U.S. Government Demands Millions of Google, Apple and Meta User Accounts." It says over the last ten years, Apple, Google and Meta have handed over data on 3.1 million accounts to the U.S. government. The number of times officials have requested user data from these big tech companies has skyrocketed to an average of 600 percent over the last ten years. Apple, Google and Meta comply with about 80 percent to 90 percent of these requests.

These are just requests. They're not necessarily saying, "We have a warrant. You need to give us the information." They are just asking for it, and they are usually getting it. So ACLU Nevada supports S.B. 361. Big thanks to Senator Hansen for starting this discussion and trying to establish these clear guidelines.

JASON WOODARD (Nevada Sheriffs' and Chiefs' Association):

We are in opposition of S.B. 361. Both the Fourth Amendment and current law require law enforcement to meet a rigorous legal threshold when seeking digital data and GPS tracking information. Section 14, subsection 3 of this bill's language requires a warrant application even in scenarios where there are valid exigent circumstances and unnecessarily requires law enforcement to obtain warrants even when the data obtained on the tracking devices results in the resolution of the case in less than 48 hours. With the evolution of technology, the use of digital tracking devices and data have become a staple of law enforcement investigations. Nevada jurors expect this type of investigative evidence and information at trial, and this evidence can only be presented after judges hold it was not obtained through a violation of the Fourth Amendment.

The law already requires that law enforcement apply for and receive a warrant to obtain and utilize these important tools and information during investigations. The use of these devices or information in exigent circumstances is extremely

rare but when necessary is very much so. As an example, during calendar year 2024, one of the larger Northern Nevada police agencies executed only 35 exigent phone ping orders for emergent situations such as a missing endangered person, kidnappings, threats to public safety and homicides. Additionally, that same agency in the same calendar year placed only 23 tracking devices, all with warrants and none under exigent circumstances. To be clear, we do not utilize private investigators or third parties to circumvent Fourth Amendment requirements during our investigations.

We believe this bill unnecessarily complicates the existing statutory framework enhancing protections to the subjects of the investigations. For these reasons, we oppose S.B. 361 as currently written. I would like to add that I am a 26-year law enforcement veteran, and I spent the majority of my career working major investigations to include homicides, fugitive investigations as part of a U.S. Marshals fugitive task force team as well as undercover operations. So I do have a familiarity with these particular scenarios and these types of devices. What I would ask you to consider is that while this technology continues to evolve, there is a necessity for all of these cases to be evaluated on a case-by-case basis, and the law currently provides for that.

JENNIFER NOBLE (Nevada District Attorneys Association):

The Nevada District Attorneys Association opposes S.B. 361. But we do want to thank Senator Hansen for the time he took to meet with us and for the robust discussion that we had in his office, the type I think that we should always have when we are talking about Fourth Amendment protections. I also want to pick up where this committee left off during the support testimony. In the *Carpenter v. United States* decision, Chief Justice John Roberts quoted Associate Justice Felix Frankfurter who said that when considering new innovations such as airplanes and radios, we must tread carefully in such cases to ensure that we do not embarrass the future.

At the beginning of this hearing, Senator Krasner made an excellent observation. She said, "I thought the Fourth Amendment already covered this." It does. In *Arizona v. Evans*, 514 U.S. 1 (1995), the United States Supreme Court made clear that suppression of evidence obtained pursuant to a search warrant should be ordered only on a case-by-case basis and only in those unusual cases where it will further the purposes of the exclusionary rule. That is to deter law enforcement from violating the constitutional rights of anyone, anyone in this room, anyone in this country. The Fourth Amendment applies to

this. Those questions can be extremely specific. They require courts to apply constitutional principles to sometimes complex and changing fact patterns. This individualized approach benefits the prosecution, the defendant and the interests of justice. To be clear, it is judges and constitutional caselaw—not district attorneys, not law enforcement—who ultimately decide whether there is an exception such as exigency or such as the good-faith exception to the warrant requirement that applies. In *United States v. Leon*, 468 U.S. 897 (1984), the United States Supreme Court recognized that good-faith exception when it talked about an officer acting pursuant to a warrant that appeared to be valid. It outlined the doctrine of the good-faith exception to the warrant requirement.

Our concern here is section 14, subsection 4 attempts to—valiantly, perhaps—codify a complex constitutional doctrine of the Fourth Amendment, the exclusionary rule, into a subsection in a Nevada statute. I would submit to you that is not a good idea for defendants. It is not a good idea for the State. That is because, quite simply, these are case-specific inquiries, and we have a robust history and lots of constitutional caselaw that can guide a court's individual analysis when it is analyzing a purported Fourth Amendment violation.

Finally, section 14, as written, appears to allow a defendant to assert that the fruits of the warrant should be suppressed based on a purported violation of a victim's constitutional rights. So it gives standing where they would not normally be standing under United States Supreme Court caselaw. For those reasons, we oppose the bill.

THOMAS MORLEY (Nevada Press Association; *Las Vegas Review-Journal*):

The clients have two specific matters of concern with S.B. 361. One is that allowing the public to serve as a check-and-balance system on governmental power is the purpose of NRS 239.001.

The second is that we request public oversight. The clients feel section 19 and section 20 are not necessary. They would undermine the public's ability to be a watchdog of our government.

CHRISTOPHER RIES (Las Vegas Metropolitan Police Department):

First, I would like to thank Senator Hansen for meeting with us this morning and for giving us the opportunity to address some of our concerns; however, we are in opposition of S.B. 361. Instead of echoing my colleagues from the Washoe County District Attorney's Office or the Nevada Sheriffs' and Chiefs'

Association, I would like to draw attention to section 15. The tracking device would only be limited to a person who is actually committing the crime and would not allow for a warrant to be issued to, for example, a kidnapping victim's phone and would possibly give standing to the suspect's defense to get the evidence suppressed.

I would also like to mention that unless an exigent circumstance or emergency is present, Apple, Google and Meta require search warrants. For these reasons, we oppose S.B. 361.

JASON WALKER (Washoe County Sheriff's Office):
We are opposed to S.B. 361 and agree with previous comments.

CYRUS HOJJATY:
I stand in opposition to S.B. 361 and echo the previous commentators.

SENATOR HANSEN:
On the *Carpenter v. United States* decision, the vote was 5 to 4 on the U.S. Supreme Court. The four liberal justices and Chief Justice John Roberts voted in favor. The justices I am normally more aligned with, including the law enforcement guys, were on the other side.

Of the 20 sections of the bill, there are only 2 sections that anyone mentioned specifically. I think we can work out some of those bugs. The overall idea it sounded like was, "Look, we are already pretty much doing this anyway. We may not want to have it codified because we want to leave it flexible because of the provisions, especially in section 14, subsection 4." I do not see a reason if they are already doing it anyway, why it would hurt anybody to have it codified, especially if we are only talking about 30 or 40 cases a year. We will work with both sides on this and see if we can amend it to everybody's satisfaction.

We always hear Ira Hansen is the most conservative member of the legislative body, and I am kind of proud of that. But in this case, I seem to be siding with the more liberal elements in the Nevada Legislature. So sometimes I am right. In this case, I am pretty sure I am right, and I am aligning with some people that most of the time, like the ACLU and others—I got a zero rating from the ACLU a couple of sessions ago. Maybe I will get it up to 5 percent this time.

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CHAIR SCHEIBLE:

We have received one letter ([Exhibit N](#)) in opposition to S.B. 361. I will close the hearing on S.B. 361 and adjourn the meeting at 2:54 p.m.

RESPECTFULLY SUBMITTED:

Jan Brase,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 341	C	2	Scott Coffee	Nevada Supreme Court Order ADKT 0581
S.B. 341	D	4	Senator James Ohrenschall	Conceptual Amendment
S.B. 341	E	10	Senator Melanie Scheible	Letters in Opposition
S.B. 142	F	10	Jered McDonald	Work Session Document
S.B. 152	G	11	Jered McDonald	Work Session Document
S.B. 241	H	12	Jered McDonald	Work Session Document
S.B. 203	I	16	Jered McDonald	Work Session Document
S.B. 240	J	16	Jered McDonald	Work Session Document
S.B. 256	K	16	Jered McDonald	Work Session Document
S.B. 323	L	16	Jered McDonald	Work Session Document
S.B. 383	M	16	Jered McDonald	Work Session Document
S.B. 361	N	34	Senator Melanie Scheible	Letter in Opposition