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Senate Committee on Judiciary

This measure may be considered for action during today's work session.

April 12, 2019

**SENATE BILL 438**

**Establishes the circumstances in which a confession by itself is sufficient to warrant the conviction of a defendant. (BDR 14-927)**

**Sponsored by:** Senate Committee on Judiciary  
**Date Heard:** April 9, 2019  
**Fiscal Impact:** Effect on Local Government: No.  
Effect on the State: No.

Senate Bill 438 provides that a confession made by a defendant is sufficient on its own to warrant a conviction without other proof that the defendant committed a crime if the defendant is charged with: certain sexual offenses; driving under the influence; an offense constituting domestic violence; or an offense involving the abuse, neglect, exploitation, isolation, or abandonment of an older person or a vulnerable person. The confession must be made to a peace officer acting in his or her official capacity, and the court must determine, based on specific considerations set forth in the bill, that there is sufficient evidence to establish the trustworthiness of the confession.

**Amendments:** Senator Cannizzaro proposes to amend the bill by replacing the word "warrant" with "sustain" in subsection 1 of Section 1 and revising the language in items (a), (b), and (c) in subsection 2 of Section 1. Those changes are as follows:

- ~~(a) Whether there is evidence demonstrating the truthfulness of portions of the confession~~ Evidence that supports the facts contained in the statement or confession;
- ~~(b) Whether the defendant had the opportunity to commit the crime~~ Evidence that may support the commission of a crime, which is corroborated by the facts contained in the statement or confession;
- ~~(c) The method of any interrogation used to solicit the confession~~ Whether the circumstances under which the statement or confession was made support the assertion that the statement or confession is trustworthy;

A conceptual mockup of these changes provided by Stephen P. Stubbs is attached.

# Proposed Changes to Senate Bill 438

## Submitted by Stephen P. Stubbs, Attorney for a Child Victim's Family

Below are proposed changes to SB 438, passed on the feedback that I have received while talking to Senators. These proposed changes also correct the criticisms and apply suggestions that were made by people opposing SB 438 during the April 8, 2019 Judiciary Committee Hearing.

In Part 1, the word "warrant" is replaced with "sustain" to use verbiage consistent with current jury instructions dealing with testimony, and clarify that a judicial decision declaring that a confession is trustworthy is not an automatic conviction. The finder of fact must still then find that the prosecution has proved its case beyond a reasonable doubt.

In Part 2, for consistency with other jurisdictions, the first 3 factors of the trustworthiness analysis were changed to use the language of the trustworthiness standard that is currently used in other states.

The proposed changes are as follows:

*1. A confession made by a defendant is, in and of itself, sufficient to ~~warrant~~ sustain the conviction of the defendant without other proof that the defendant committed a crime if:*

*(a) The defendant is charged with:*

*(1) An offense listed in NRS 179D.097;*

*(2) Driving under the influence of intoxicating liquor or a controlled substance in violation of NRS 484C.110;*

*(3) An offense that constitutes domestic violence pursuant to NRS 33.018; or*

*(4) An offense involving the abuse, neglect, exploitation, isolation or abandonment of an older person or a vulnerable person pursuant to NRS 200.5091 to 200.50995, inclusive;*

*(b) The confession is made to a peace officer while the peace officer is acting in his or her official capacity; and*

*(c) The court determines that there is sufficient evidence to establish the trustworthiness of the confession.*

*2. In making a determination pursuant to paragraph (c) of subsection 1, the court shall consider the following factors in addition to any other factors the court considers to be important:*

*(a) ~~Whether there is evidence demonstrating the truthfulness of portions of the confession~~ Evidence that supports the facts contained in the statement or confession;*

*(b) ~~Whether the defendant had the opportunity to commit the crime~~ Evidence that may support the commission of a crime, which is corroborated by the facts contained in the statement or confession;*

*(c) ~~The method of any interrogation used to solicit the confession~~ Whether the circumstances under which the statement or confession was made support the assertion that the statement or confession is trustworthy; and*

*(d) Whether the defendant is a vulnerable person.*

*3. As used in this section, "vulnerable person" has the meaning ascribed to it in NRS 200.5092.*