

SJR 17 - 2015

Introduced on: Mar 16, 2015

By Roberson, Harris, Farley, Hardy, Settlemeyer

Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Effect on Local Government: **No.**

Effect on State: **No.**

Most Recent File No. 37. **(Return to 2017 Session)**
History Action:

Past Hearings

Senate Judiciary	Apr 02, 2015	Heard, No Action
Senate Judiciary	Apr 09, 2015	Not Heard
Senate Judiciary	Apr 10, 2015	Amend, and do pass as amended
Senate Judiciary	May 06, 2015	Mentioned No Jurisdiction
Assembly Legislative Operations and Elections	May 12, 2015	Heard
Assembly Legislative Operations and Elections	May 14, 2015	Amend, and do pass as amended, lost Reconsider previous action on 5-14-15 Amend, and do pass as amended

Final Passage Votes

Senate Final Passage (1st Reprint)	Apr 15, 2015	Yea 15, Nay 6, Excused 0, Not Voting 0, Absent 0
Assembly Final Passage (2nd Reprint)	May 22, 2015	Yea 41, Nay 1, Excused 0, Not Voting 0, Absent 0

Bill Text [As Introduced](#) [1st Reprint](#) [2nd Reprint](#) [As Enrolled](#)

Adopted Amendments [Amend. No. 449](#) [Amend. No. 834](#)

Bill History

Mar 16, 2015 Read first time. Referred to Committee on Judiciary. To printer.

Mar 18, 2015 From printer. To committee.

Apr 14, 2015 From committee: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. (Amend. No. 449.) To printer.

Apr 15, 2015 From printer. To engrossment. Engrossed. First reprint. Read third time. Passed, as amended. Title approved. (Yeas: 15, Nays: 6.) To Assembly.

Apr 16, 2015 In Assembly. Read first time. Referred to Committee on Legislative Operations and Elections. To committee.

May 18, 2015 From committee: Amend, and do pass as amended.

May 19, 2015 Read second time. Amended. (Amend. No. 834.) To printer.

May 20, 2015 From printer. To reengrossment. Reengrossed. Second reprint. Taken from General File. Placed on General File for next legislative day.

May 21, 2015 Taken from General File. Placed on General File for next legislative day.

May 22, 2015 Read third time. Passed, as amended. Title approved. (Yeas: 41, Nays: 1.) To Senate.

May 25, 2015 In Senate.

May 28, 2015 Assembly Amendment No. 834 concurred in. To enrollment.

May 30, 2015 Enrolled and delivered to Secretary of State. File No. 37.

(Return to 2017 Session)



PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada Legislature

BILL SUMMARY
78th REGULAR SESSION
OF THE NEVADA LEGISLATURE

SENATE JOINT RESOLUTION NO. 17 (Enrolled)
Relates to Victims' Rights

Summary

Senate Joint Resolution No. 17 proposes to amend the *Nevada Constitution* by eliminating existing victims' rights provisions found in Article 1, Section 8, and replacing them with an expanded set of provisions in the form of a victims' bill of rights.

Effective Date

If approved in identical form during the 2017 Legislative Session, the proposal will be submitted to the voters for final approval or disapproval at the 2018 General Election.

Background Information

The proposed new section of the *Nevada Constitution* is modeled after the victims' bill of rights set forth in the *California Constitution* as it was amended in 2008 by what is commonly referred to as Marsy's Law (Cal. Const. Art. 1, § 28). The rights to which a victim of crime would be entitled under the *Nevada Constitution* include the right:

- (a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process;
- (b) To be reasonably protected from the defendant and persons acting on behalf of the defendant;
- (c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant;
- (d) To prevent the disclosure of confidential information or records to the defendant, which could be used to locate or harass the victim or the victim's family;

- (e) To refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents;
- (f) To reasonably confer with the prosecuting agency, upon request, regarding the case;
- (g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings;
- (h) To be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing, and at any parole proceeding;
- (i) To the timely disposition of the case following the arrest of the defendant;
- (j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant;
- (k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody;
- (l) To full and timely restitution;
- (m) To the prompt return of legal property when no longer needed as evidence;
- (n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender;
- (o) To have the safety of the victim, the victim's family, and the general public considered before any parole or other postjudgment release decision is made;
- (p) To have all monetary payments, money, and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim; and
- (q) To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.

SENATE JOINT RESOLUTION NO. 17—SENATORS ROBERSON,
HARRIS, FARLEY; HARDY AND SETTELMAYER

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Proposes to amend the Nevada Constitution to
expand the rights guaranteed to victims of crime.
(BDR C-952)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada
Constitution to expand the rights guaranteed to victims of
crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

1 Under the Nevada Constitution, the Legislature is required to provide by law
2 for certain rights of the victims of crimes, in particular, the right to be informed of
3 the status of criminal proceedings concerning those crimes, the right to be present
4 at public hearings concerning those crimes and the right to be heard at all
5 proceedings for the sentencing or release of persons convicted of those crimes.
6 (Nev. Const. Art. 1, § 8)
7 This resolution proposes to amend the Nevada Constitution to eliminate the
8 existing provisions of Article 1, section 8, concerning victims' rights and to add a
9 new section that sets forth an expanded list of such rights in the form of a victims'
10 bill of rights. The new section is modeled after the victims' bill of rights set forth in
11 the California Constitution as it was amended in 2008 by what is commonly
12 referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

1 RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF
2 NEVADA, JOINTLY, That a new section, designated Section 23, be
3 added to Article 1 of the Nevada Constitution to read as follows:

4 *Sec. 23. 1. Each person who is the victim of a crime*
5 *is entitled to the following rights:*
6 *(a) To be treated with fairness and respect for his or her*
7 *privacy and dignity, and to be free from intimidation,*



1 *harassment and abuse, throughout the criminal or juvenile*
2 *justice process.*

3 *(b) To be reasonably protected from the defendant and*
4 *persons acting on behalf of the defendant.*

5 *(c) To have the safety of the victim and the victim's*
6 *family considered in fixing the amount of bail and release*
7 *conditions for the defendant.*

8 *(d) To prevent the disclosure of confidential information*
9 *or records to the defendant, the defendant's attorney, or any*
10 *other person acting on behalf of the defendant, which could*
11 *be used to locate or harass the victim or the victim's family*
12 *or which disclose confidential communications made in the*
13 *course of medical or counseling treatment, or which are*
14 *otherwise privileged or confidential by law.*

15 *(e) To refuse an interview, deposition or discovery*
16 *request by the defendant, the defendant's attorney or any*
17 *other person acting on behalf of the defendant, and to set*
18 *reasonable conditions on the conduct of any such interview*
19 *to which the victim consents.*

20 *(f) To reasonable notice of and to reasonably confer*
21 *with the prosecuting agency, upon request, regarding the*
22 *arrest of the defendant if known by the prosecutor,*
23 *the charges filed, the determination whether to extradite the*
24 *defendant and, upon request, to be notified of and informed*
25 *before any pretrial disposition of the case.*

26 *(g) To reasonable notice of all public proceedings,*
27 *including delinquency proceedings, upon request, at which*
28 *the defendant and the prosecutor are entitled to be present*
29 *and of all parole or other postconviction release*
30 *proceedings, and to be present at all such proceedings.*

31 *(h) To be heard, upon request, at any proceeding,*
32 *including any delinquency proceeding, involving a*
33 *postarrest release decision, plea, sentencing, postconviction*
34 *release decision or any proceeding in which a right of the*
35 *victim is at issue.*

36 *(i) To a speedy trial and a prompt and final conclusion*
37 *of the case and any related postjudgment proceedings.*

38 *(j) To provide information to any public officer or*
39 *employee conducting a presentence investigation*
40 *concerning the impact of the offense on the victim and the*
41 *victim's family and any sentencing recommendations before*
42 *the sentencing of the defendant.*

43 *(k) To receive, upon request, the report of any*
44 *presentence investigation when available to the defendant,*
45 *except for those portions made confidential by law.*



1 (l) *To be informed, upon request, of the conviction,*
2 *sentence, place and time of incarceration, or other*
3 *disposition of the defendant, the scheduled release date of*
4 *the defendant and the release of or the escape by the*
5 *defendant from custody.*

6 (m) *To restitution as provided by law.*

7 (n) *To the prompt return of property when no longer*
8 *needed as evidence.*

9 (o) *To be informed of all parole procedures, to*
10 *participate in the parole process, to provide information to*
11 *the parole authority to be considered before the parole of*
12 *the offender and to be notified, upon request, of the parole*
13 *or other release of the offender.*

14 (p) *To have the safety of the victim, the victim's family*
15 *and the general public considered before any parole or*
16 *other postjudgment release decision is made.*

17 (q) *To be informed of the rights enumerated in*
18 *paragraphs (a) to (p), inclusive.*

19 2. *A victim, the retained attorney of a victim, a lawful*
20 *representative of the victim or the prosecuting attorney upon*
21 *request of the victim may enforce the rights enumerated in*
22 *subsection 1 in any trial or appellate court with jurisdiction*
23 *over the case as a matter of right. The court shall act*
24 *promptly on such a request.*

25 3. *Except as otherwise provided in subsection 4, no*
26 *person may maintain an action against this State or any*
27 *public officer or employee for damages or injunctive,*
28 *declaratory or other legal or equitable relief on behalf of a*
29 *victim of a crime as a result of a violation of this section or*
30 *any statute enacted by the Legislature pursuant thereto. No*
31 *such violation authorizes setting aside a conviction or*
32 *sentence or continuing or postponing a criminal*
33 *proceeding.*

34 4. *A person may maintain an action to compel a public*
35 *officer or employee to carry out any duty required by this*
36 *section or any statute enacted by the Legislature pursuant*
37 *thereto.*

38 5. *The granting of these rights to victims must not be*
39 *construed to deny or disparage other rights possessed by*
40 *victims. A court in its discretion may extend the right to be*
41 *heard at sentencing to any person harmed by the defendant.*
42 *A parole authority shall extend the right to be heard at a*
43 *parole hearing to any person harmed by the offender.*



1 6. *At the regular session of the Legislature immediately*
2 *following the approval and ratification of this section by the*
3 *people, the Legislature shall provide by law that:*

4 (a) *All persons who suffer losses as a result of criminal*
5 *activity have the right to seek and secure restitution from*
6 *the persons convicted of the crimes causing the losses they*
7 *suffer.*

8 (b) *Restitution must be ordered from the convicted*
9 *wrongdoer in every case, regardless of the sentence or*
10 *disposition imposed, in which a victim suffers a loss.*

11 (c) *All monetary payments, money and property*
12 *collected from any person who has been ordered to make*
13 *restitution must be first applied to pay the amounts ordered*
14 *as restitution to the victim.*

15 7. *The Legislature shall by law provide any other*
16 *measure necessary or useful to secure to victims of crime*
17 *the benefit of the rights set forth in this section.*

18 8. *As used in this section, "victim" means a person who*
19 *suffers direct or threatened physical, psychological or*
20 *financial harm as a result of the commission or attempted*
21 *commission of a crime or delinquent act. The term also*
22 *includes, without limitation, the person's spouse, parents,*
23 *children, siblings or guardian, and includes a lawful*
24 *representative of a victim who is deceased, a minor or*
25 *physically or psychologically incapacitated. The term does*
26 *not include a person in custody for an offense, the accused*
27 *or a person whom the court finds would not act in the best*
28 *interests of a minor victim.*

29 And be it further

30 RESOLVED, That Section 8 of Article 1 of the Nevada
31 Constitution be amended to read as follows:

32 Sec. 8. 1. No person shall be tried for a capital or
33 other infamous crime (except in cases of impeachment, and in
34 cases of the militia when in actual service and the land and
35 naval forces in time of war, or which this State may keep,
36 with the consent of Congress, in time of peace, and in cases
37 of petit larceny, under the regulation of the Legislature)
38 except on presentment or indictment of the grand jury, or
39 upon information duly filed by a district attorney, or Attorney
40 General of the State, and in any trial, in any court whatever,
41 the party accused shall be allowed to appear and defend in
42 person, and with counsel, as in civil actions. No person shall
43 be subject to be twice put in jeopardy for the same offense;
44 nor shall he be compelled, in any criminal case, to be a
45 witness against himself.



1 2. ~~[The Legislature shall provide by law for the rights of~~
2 ~~victims of crime, personally or through a representative, to~~
3 ~~be:~~

4 ~~—(a) Informed, upon written request, of the status or~~
5 ~~disposition of a criminal proceeding at any stage of the~~
6 ~~proceeding;~~

7 ~~—(b) Present at all public hearings involving the critical~~
8 ~~stages of a criminal proceeding; and~~

9 ~~—(c) Heard at all proceedings for the sentencing or release~~
10 ~~of a convicted person after trial.~~

11 ~~—3. Except as otherwise provided in subsection 4, no~~
12 ~~person may maintain an action against the State or any public~~
13 ~~officer or employee for damages or injunctive, declaratory or~~
14 ~~other legal or equitable relief on behalf of a victim of a crime~~
15 ~~as a result of a violation of any statute enacted by the~~
16 ~~Legislature pursuant to subsection 2. No such violation~~
17 ~~authorizes setting aside a conviction or sentence or continuing~~
18 ~~or postponing a criminal proceeding.~~

19 ~~—4. A person may maintain an action to compel a public~~
20 ~~officer or employee to carry out any duty required by the~~
21 ~~Legislature pursuant to subsection 2.~~

22 ~~—5.]~~ No person shall be deprived of life, liberty, or
23 property, without due process of law.

24 ~~[6.]~~ 3. Private property shall not be taken for public use
25 without just compensation having been first made, or secured,
26 except in cases of war, riot, fire, or great public peril, in
27 which case compensation shall be afterward made.

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MARCH 16, 2015 — DAY 43

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THE FORTY-THIRD DAY

CARSON CITY (Monday), March 16, 2015

Senate called to order at 12:19 p.m.

President Hutchison presiding.

Roll called.

All present except Senators Segerblom and Smith, who were excused.

Prayer by the Chaplain, Pastor Albert Tilstra.

Our Father in Heaven, we know that You can see the hidden things in every heart. If our intentions are good, help us to make them live in good deeds. If what we intend or desire makes us uncomfortable in Your presence, take it from us, that we may do what we ought to do.

For Jesus' sake,

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Judiciary, to which were referred Senate Bills Nos. 52, 55, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

GREG BROWER, *Chair*

Mr. President:

Your Committee on Revenue and Economic Development, to which was referred Senate Bill No. 95, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MICHAEL ROBERSON, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, March 13, 2015

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bill No. 41.

CAROL AIELLO-SALA

Assistant Chief Clerk of the Assembly

WAIVERS AND EXEMPTIONS

NOTICE OF EXEMPTION

March 16, 2015

The Fiscal Analysis Division, pursuant to Joint Standing Rule No. 14.6, has determined the eligibility for exemption of: Senate Bills Nos. 196, 202, 204, 206, 210, 227.

MARK KRMPOTIC

Fiscal Analysis Division

MOTIONS, RESOLUTIONS AND NOTICES

By Senators Roberson, Harris, Farley, Hardy and Settlemeyer:

Senate Joint Resolution No. 17—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 23, be added to Article 1 of the Nevada Constitution to read as follows:

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.

(e) To refuse an interview, deposition or discovery request by the defendant, the defendant's attorney or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(f) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant and, upon request, to be notified of and informed before any pretrial disposition of the case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a postarrest release decision, plea, sentencing, postconviction release decision or any proceeding in which a right of the victim is at issue.

(i) To a speedy trial and a prompt and final conclusion of the case and any related postjudgment proceedings.

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(k) To receive, upon request, the report of any presentence investigation when available to the defendant, except for those portions made confidential by law.

(l) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(m) To restitution as provided by law.

(n) To the prompt return of property when no longer needed as evidence.

(o) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(p) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

(q) To be informed of the rights enumerated in paragraphs (a) to (p), inclusive.

2. *A victim, the retained attorney of a victim, a lawful representative of the victim or the prosecuting attorney upon request of the victim may enforce the rights enumerated in subsection 1 in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.*

3. *Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.*

4. *A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.*

5. *The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.*

6. *At the regular session of the Legislature immediately following the approval and ratification of this section by the people, the Legislature shall provide by law that:*

(a) *All persons who suffer losses as a result of criminal activity have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.*

(b) *Restitution must be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a victim suffers a loss.*

(c) *All monetary payments, money and property collected from any person who has been ordered to make restitution must be first applied to pay the amounts ordered as restitution to the victim.*

7. *The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.*

8. *As used in this section, "victim" means a person who suffers direct or threatened physical, psychological or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term also includes, without limitation, the person's spouse, parents, children, siblings or guardian, and includes a lawful representative of a victim who is deceased, a minor or physically or psychologically incapacitated. The term does not include a person in custody for an offense, the accused or a person whom the court finds would not act in the best interests of a minor victim.*

And be it further

RESOLVED, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

2. ~~{The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~— 3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~— 4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~— 5.} No person shall be deprived of life, liberty, or property, without due process of law.~~

~~{6.} 3. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.~~

Senator Roberson moved that the resolution be referred to the Committee on Judiciary.

Motion carried.

By Senator Segerblom:

Senate Joint Resolution No. 18—Proposing to amend the Nevada Constitution to repeal term limits for state and local offices.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That Section 3 of Article 4 of the Nevada Constitution be amended to read as follows:

Sec. 3. ~~{1.}~~ The members of the Assembly shall be chosen biennially by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November and their term of Office shall be two years from the day next after their election.

~~{2. No person may be elected or appointed as a member of the Assembly who has served in that Office, or at the expiration of his current term if he is so serving will have served, 12 years or more, from any district of this State.}~~

And be it further

RESOLVED, That Section 4 of Article 4 of the Nevada Constitution be amended to read as follows:

Sec. 4. ~~{1.}~~ Senators shall be chosen at the same time and places as members of the Assembly by the qualified electors of their respective districts, and their term of Office shall be four years from the day next after their election.

~~{2. No person may be elected or appointed as a Senator who has served in that Office, or at the expiration of his current term if he is so serving will have served, 12 years or more, from any district of this State.}~~

And be it further

RESOLVED, That Section 3 of Article 5 of the Nevada Constitution be amended to read as follows:

Sec. 3. No person shall be eligible to the Office of Governor, who is not a qualified elector, and who, at the time of such election, has not attained the age of twenty five years; and who shall not have been a citizen resident of this State for two years next preceding the election. ~~}; nor shall any person be elected to the Office of Governor more than twice; and no person who has held the Office of Governor, or acted as Governor for more than two years of a term to which some other person was elected Governor shall be elected to the Office of Governor more than once.~~

And be it further

RESOLVED, That Section 19 of Article 5 of the Nevada Constitution be amended to read as follows:

Sec. 19. 1. A Secretary of State, a Treasurer, a Controller, and an Attorney General, shall be elected at the same time and places, and in the same manner as the Governor. The term of office of each shall be the same as is prescribed for the Governor.

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
April 2, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:09 p.m. on Thursday, April 2, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senatorial District No. 7
Senator Pat Spearman, Senatorial District No. 1

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Cassandra Grieve, Committee Secretary

OTHERS PRESENT:

Meg Garvin, Executive Director, National Crime Victim Law Institute
Kristy Oriol, Nevada Network Against Domestic Violence
John T. Jones, Jr., Nevada District Attorneys Association
Chuck Callaway, Las Vegas Metropolitan Police Department
Sean B. Sullivan, Office of the Public Defender, Washoe County
Steve Yeager, Office of the Public Defender, Clark County

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Andres Moses, Eighth Judicial District Court, Clark County
Vanessa Spinazola, American Civil Liberties Union of Nevada
The Honorable James Hardesty, Chief Justice, Nevada Supreme Court
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General
Rebecca Salazar, Program Manager, Victims of Crime Program, Department of Administration
Greg Cox, Director, Department of Corrections
Jackie Muth, Deputy Director, Department of Public Safety
Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety
Julie Butler, Chief, General Services Division, Department of Public Safety
Nancy Wojcik, Administrator, Division of Field Services, Department of Motor Vehicles
Ron Knecht, State Controller
James Smack, Chief Deputy Controller, Office of the State Controller
Kara Jenkins, Administrator, Nevada Equal Rights Commission, Department of Employment, Training and Rehabilitation
Elisa Cafferata, Nevada Advocates for Planned Parenthood Affiliates
Marlene Lockard, Nevada Women's Lobby
Brock Maylath, President, Transgender Allies Group
Kent Ervin
Lora Myles
Rana Goodman, *The Vegas Voice*
Dan Roberts, *The Vegas Voice*
Jonathan Friedrich
Deane DeLaCruz
John Radocha
Bob Robey
Julie Belshe
Susan DeBoer, Office of the Public Guardian, Washoe County
Sally Ramm, Elder Rights Attorney, Aging and Disability Services Division, Department of Health and Human Services
Desiree Ducharme, Supervisor, Office of the Public Guardian, Clark County

Chair Brower:

We will open the meeting with Senate Joint Resolution (S.J.R.) 17. I am in receipt of a proposed amendment from Jeff Kaye (Exhibit C).

SENATE JOINT RESOLUTION 17: Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Senator Michael Roberson (Senatorial District No. 20):

Senate Joint Resolution 17 provides an expanded list of much needed and long overdue rights to victims of crime. As members of the Senate Committee on Judiciary, we are aware of existing constitutional provisions requiring Nevada law to provide some rights to the victims of crime. Indeed, portions of chapter 178 of the *Nevada Revised Statutes* (NRS) set forth a number of protections for crime victims and witnesses. However, more needs to be done out of respect for those who suffer daily due to the effects of crime to ensure the voices of these people are heard and their needs recognized.

This important resolution is modeled after a set of victims' rights found in the constitution of the state of California known as Marsy's Law. Marsy's Law is named after Marsalee (Marsy) Nicholas, a beautiful, vibrant University of California, Santa Barbara, student, who was stalked and killed by her ex-boyfriend in 1983. Only a week after Marsy was murdered, the family walked into a grocery store after visiting Marsy's grave and were confronted by the accused murderer. They had no idea he had been released on bail.

Their story is typical of the pain and suffering the family members of murder victims have endured. They were not informed because the courts and law enforcement, though well meaning, had no obligation to keep them informed. According to the Marsy's Law for All advocacy group, while criminals have more than 20 individual rights spelled out in the U.S. Constitution, the surviving family members of murder victims have none.

The least we can do here in Nevada is to adopt the many important provisions of Marsy's Law in the Nevada Constitution. Senate Joint Resolution 17 proposes to add a new section to Article 1 of the Nevada Constitution and delete existing provisions of Article 1, section 8 concerning victims' rights. The proposed new section, section 23, provides an expanded list of the rights set forth in Marsy's Law. Some key rights listed in S.J.R. 17 are:

- (a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process. (b) To be reasonably protected from the defendant and persons acting on

behalf of the defendant. (c) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant. (d) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant

Victims will have the right:

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings

Senate Joint Resolution 17 guarantees a victim has the right:

(l) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody. (m) To restitution as provided by law. (n) To the prompt return of property when no longer needed as evidence. (o) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority (p) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

Senate Joint Resolution 17 further states,

6. At the regular session of the Legislature immediately following the approval and ratification of this section by the people, the Legislature shall provide by law that: (a) All persons who suffer losses as a result of criminal activity have the right to seek and secure restitution from the persons convicted of the crimes

and,

7. The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section

Language similar to this bill was recently added to the constitution of the state of Illinois. The bill enjoyed bipartisan support in the Illinois legislature and was overwhelmingly passed in November by more than 78 percent of the popular vote.

We are fortunate to have here today one of the Country's victims' rights experts. Meg Garvin will further testify on S.J.R. 17.

Meg Garvin (Executive Director, National Crime Victim Law Institute):

The National Crime Victim Law Institute is based in Portland, Oregon. I am a clinical professor of law at Lewis & Clark Law School. As a lawyer, I have worked for victims' rights for over 12 years. I am a victims' advocate and a constitutional lawyer and scholar.

I worked for the public defense while in law school. Following law school, I focused my work on the constitutional rights of all individuals. This choice led me to realize there are two individuals pulled into the criminal justice system. One individual, the defendant, is pulled into the system by his or her own doing. Defendants are pulled into the system, and they have rights.

The other individual, the victim, is pulled into the system by the defendant's doing. The victim is pulled into the system by not any doing of his or her own, yet victims have *de minimis* rights.

Over the last 30 years in this Country, substantial work has been done to advance the rights of victims and to ensure procedural justice for everyone involved in the criminal justice system, whether that be the defendant or the victim and both of their families. Transparency in procedural justice is critical to a fair system.

That advancement work has involved Nevada. Over the decades, great work has been done in Nevada, including a constitutional amendment affording rights to victims—but those are very few rights. Experience across the Country has led us to understand the few rights listed in the Nevada Constitution are insufficient to protect survivors.

Recent peer-reviewed studies done by mental health professionals show when victims are pulled into the criminal justice system and not afforded rights or afforded rhetorical rather than meaningful rights, they actually suffer increased posttraumatic stress symptoms. If we afford survivors meaningful rights in the system, they engage more with the system and are more likely to report crime.

There are two proposed amendments to S.J.R. 17. I will address the Barry Duncan Amendment (Exhibit D), which demonstrates of the amount of collaboration in the last 72 hours between public defense advocates, the prosecutor's office, victim advocates and other allied professionals in the community who work with survivors.

Section 23, subsection 1, paragraph (a) discusses a victim's right to be treated with fairness. There is specific language about the scope of the fairness, but a victim is to be treated with fairness and respect for his or her privacy and dignity. The import of this right, which is a new articulation in the Nevada Constitution, is the foundational right of procedural justice. Fairness in the criminal justice system is owed to the defendant, but it is also owed to the victim. Victims' rights are about transparency and treating people with dignity, which are basic human rights.

Paragraph (b) is the right to be reasonably protected from the defendant and persons acting on behalf of the defendant. Victims who do not feel safe engaging with the criminal justice system do not report crimes, or once they report crimes, if they do not feel safe going through the process, they will not continue to engage the process. This right helps promote engagement.

Chair Brower:

This is an important issue, but with a crowded agenda, I want the Committee to make comments as we go through each paragraph instead of waiting until the end of testimony.

Senator Ford:

Please clarify the scope of paragraph (b). Are you talking about after a defendant has been convicted and released from prison, or are you talking about the defendant during the trial?

Ms. Garvin:

The scope of all the rights listed in S.J.R. 17 is during the criminal justice process: pretrial, during trial and through parole or probation. This right is critical. The outreach to victims by defendants or perpetrators and their family members can verge on chargeable witness tampering, which can be intimidating and result in victims disengaging from the system.

Senator Ford:

I understand the declaration of rights is important enough you want them in the Nevada Constitution. These rights already exist in Nevada's laws: a statutory right to be free from assault, from battery, etc. I understand you want to raise victims' rights to the level of a constitutional protection, but that level is where words are even more important.

Knowing words at the constitutional level are even more important, what does it mean to say "reasonably protected from the defendant"? When can someone say a right is being infringed upon? If the defendant is trying to assault the victim again, then I understand that situation. What if the defendant is on the same street? Has the victim's right been violated in some regard? How is "protected" defined when you are talking about the constitutional right to be protected from a defendant?

Paragraph (a) states to be free from intimidation, harassment and abuse. Paragraph (b) talks about being reasonably protected. Protected must be different from intimidation, harassment and abuse because different words are being used.

The words "fairness" and "respect" are not usually used in the constitutional context. These words seem vague. How does one enforce those terms? This is a State constitutional right, and we are responsible for ensuring these rights. How do we do this?

Ms. Garvin:

There are ongoing conversations between the interested parties on that regard. Generally speaking, constitutional language is broader than statutory language. The term "fairness" is a generalized right in the U.S. Constitution and has been interpreted by the courts. We can talk through the legacy of each of those words, because some of them already have specific legal meanings.

These same rights exist in state constitutional amendments across the Country. Thirty-three states have these constitutional amendments. More than half of those states have something similar to S.J.R. 17. We can look to law from other jurisdictions that inform what those words mean.

Those words do not mean a victim can automatically say someone cannot walk down the same side of the street as the victim. There are civil protection orders for that situation. Those words do mean a victim can ask a judge during release proceedings to specifically consider the right to protection.

Senator Ford:

What does “protected” mean? Protected from what? The language seems too vague. Constitutional language may be broader, but I am concerned about not knowing what this language truly means. How is a defendant to know he or she is in violation of someone’s constitutional right to “protection”?

Ms. Garvin:

Your concern is important to the conversation. These rights are about procedural rights. The defendant is not criminally liable for violating these. These rights are not about creating new criminal conduct on behalf of the defendant. These rights are to be held by the victim throughout the criminal process; they are not rights against the defendant.

For example, the defendant who assaulted me has served time for that crime. I am at the release hearing. With these constitutional rights, I have the right to ask the judge to specifically consider that the defendant and I go to the same gym, no matter what the prosecutors say. Those are the kinds of situations to which these rights speak.

As we go through S.J.R. 17 and its proposed amendment, Exhibit D, I will pause on the points that are significant changes from the Nevada Constitution.

Paragraph (c) relates to protection that is a specific consideration of safety at bail. Paragraph (d) ensures confidential information is not disclosed, which is a specific way of ensuring protection.

Paragraph (e) is the right to refuse an interview or deposition request. Defendants do not have a U.S. constitutional right to discovery from a nonparty. It is well-settled U.S. constitutional law that there is no affirmative right by a

defendant to interview or depose. Victims are often subject to interviews and deposition pursuant to rules. Paragraph (e) gives victims the right to refuse or consent. It is an important clarification of law because we have seen intimidation occur.

Paragraph (f) discusses the right to reasonable notice and to reasonably confer with the prosecuting attorney with regard to certain events. Paragraph (f) is a portion of rights about victims having a voice—not a veto—in the criminal justice system.

The criminal justice system has evolved in such a way that victims often feel their case is purely the state versus the defendant with the fact they were raped or beaten being irrelevant. The right to know and confer is simply the right to be a part of the process, to be informed.

Paragraph (g) also provides the right to be notified and present at certain proceedings. It is important for many survivors to witness justice in action.

Paragraph (h) is the right to be heard, which is the third prong of the basic due process rights of notice, presence and fair hearing. The premise of victims' rights focuses on the ideas of: let me know, let me confer, let me be present and let me be heard.

Senator Ford:

Is it correct to say these rights are not against the defendant but are procedural?

Regarding the right to reasonable notice and the right to reasonably confer in paragraphs (f) and (g), and then the right to be heard in paragraph (h), does the State then have a burden to send a letter to a victim under circumstances where these rights arise?

Are we saying the State has to find the victim or the victim's family as per paragraph (d)? What do these rights of reasonable notice mean, and what burden does it place on the State to afford those rights?

Ms. Garvin:

Yes, the State will have an obligation to notify the victim—who is generally a witness in the case anyway—of proceedings.

This obligation is specifically spelled out further in S.J.R. 17 with what is known as a Marsy's Law notification. A Marsy's Law notification informs victims of their rights from the beginning. It lets victims know they have these rights, and since one of the notices is of hearings, then there is a notification requirement. Notification can be a letter or a phone call. Victims' advocates in most jurisdictions already let victims know of these procedures.

Paragraph (i) discusses timely disposition. No one wants a slow judicial process; it is not good for the State, the community, defendants or victims. This right, however, does not impede a defendant's or State's right to prepare for trial. It is an additional consideration for the court if there is unreasonable delay.

Chair Brower:

What does the right to timely disposition mean?

Ms. Garvin:

It means unreasonable delays should not happen. A case in the state of Arizona had 17 continuances with *de minimus* basis. Some continuances were from the defense and some were from the prosecution. The victim asserted her speedy trial right which motivated the judge to question the delays. In that situation, the court granted a 30-day continuance but no further continuances.

Senator Ford:

How does this example relate to a defendant's right to a speedy trial?

Ms. Garvin:

Defendants have a U.S. constitutional right to speedy trial, as well as a State statutory right. Each set of rights are similar in language and do not conflict with each other. The defendant can move the trial forward.

Chair Brower:

Generally, defendants have a right to demand a trial within a number of days of indictment.

Ms. Garvin:

Paragraph (j) describes the right to provide information to the individual conducting the presentence investigation report (PSI). This ensures that information presented to a judge in a PSI is as holistic as possible. Paragraph (j) ensures the PSI reporter knows what happened to the victim and what the

victim thinks about the crime. Paragraph (j) essentially guarantees another opportunity to provide accurate information to the judge.

Paragraph (l) requests the victim be informed of the outcome of the trial, which is a basic right. Where is the defendant, now perpetrator, located? When is the perpetrator's release? Has the perpetrator escaped? Safety planning may need to be done.

Paragraph (m) is about timely restitution, which is a critical piece in conjunction with a paragraph (r). Paragraphs (m) and (r) are both about restitution and the fundamental premise that victims should not carry the financial burden of their own victimization.

One should not pay to be assaulted. One should not pay to be a survivor. Does this mean we will have debtors' prisons? Does this mean it will place an undue burden on defendants who cannot afford to pay? No.

Paragraphs (m) and (r) represent an order to the right to restitution, the right to a reasonable payment plan that is then adjudicated and subsequently guarded by the court. Paragraph (m) ensures a restitution order is put in place; if money is collected, paragraph (r) ensures the money goes first to the victim.

Paragraph (n) is about the return of property after it is no longer needed, which is a commonsense provision. Paragraph (o) is the right to be informed of postconviction proceedings and to be provided information, ensuring a level of specificity. Despite conceptions from television, victimization does not end at trial; victimization continues, and victims want to know what happens with their perpetrators.

Paragraph (p) is about the safety of the victim and the victim's family after the parole process, which is akin to the earlier provision, but paragraph (p) is during parole.

Paragraph (q) discusses Senator Ford's earlier question about informing victims, which is the Marsy's Law notification card. The card specifically informs victims of their rights and amends this provision into the Nevada Constitution.

Defendants have their Miranda rights and are informed of those rights—which is the correct thing to do. Victims have certain rights, too, and they should be

advised of those rights. The Marsy's Law notification card can be produced in a myriad of ways. I understand victims are already given informational guides. The Marsy's Law language can be wrapped into existing guides. Implementing the Marsy's Law notification card is not a significant burden; it allows an awareness of a victim's constitutional rights.

That concludes the predominant affirmative rights S.J.R. 17 adds to the Nevada Constitution. Section 23, subsections 2 through 7 are procedural, although the conversation regarding subsection 2 is ongoing.

Subsection 2 is designed to ensure victims have independent standing to assert their rights, even though they are not a party to the criminal case. This means there are times when the prosecutor's priorities align perfectly with the victim's priorities. Other times, however, the prosecutor has a job to do that does not align with the victim's needs.

Victims may want higher bond at a release hearing or may want their perpetrators to come home. There are survivors who do not want their perpetrators held. Section 23, subsection 2 gives victims standing to speak their mind. It does not change the calculus of the judge. It is a voice, not a veto—in which the victim has independent standing.

We have found this language to be necessary even though a statutory standing for victims should be obvious. Defendants have constitutional rights. For some reason, a victim has never had legal standing, so explicit standing is the only way to achieve a voice. That is the reason for subsection 2.

Subsections 3 and 4 are the focus of great ongoing collaboration between interested parties because some language in the proposed amendment, Exhibit D, was stricken from the original bill. These subsections outline what victims are allowed with their standing; we do not want to create a lawsuit opportunity for damages with this language.

Subsections 3 and 4 limit what a victim can do with his or her rights, but these subsections need work in order to make sure no one is sued; we do not want to see civil damages imposed as a result of using this language.

Subsection 5 states victims' rights do not disparage other rights; they do not supersede another's existing rights. Subsection 5 speaks to what the court can

do at sentencing to broaden who is listened to and what can happen at parole proceedings.

Senator Ford:

The second sentence in subsection 5 states, "A court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant." To name any person harmed by the defendant is a broad statement. How is harmed defined when you are talking about who this right is afforded to under this constitutional amendment?

Ms. Garvin:

It is already at the court's discretion to hear from anyone at sentencing. Subsection 5 does not touch preexisting discretion of a court to hear from anyone. When judges choose to hear from someone at sentencing, the information provided must be relevant. Subsection 5 does not touch that analysis. Regarding the sentence you quoted, I have no comment on what it achieves differently than that in Nevada's Judicial Branch.

Senator Ford:

Is it correct that many of these rights are already in statute? Is it correct S.J.R. 17 puts these same rights into the Nevada Constitution?

Ms. Garvin:

Some of these rights are in statute but not in the Nevada Constitution. There is a significant cultural difference between statute and constitution. In this case, statute and constitution do not differ because this is judicial commenting on judicial discretion, which is why the word "may" is used.

Using the word "may" is an encouragement to the judiciary to use its discretion to broaden to whom it listens; it is not a directive. The court could already broaden to whom it listens; by adding this section to the Nevada Constitution, the Legislature encourages a broad application of court discretion.

Senator Ford:

Can you tell me how the other 33 states handle this language? How do other states handle the definition of "any person harmed by the offender" and the broadness of "harmed?"

Ms. Garvin:

The term victim, defined in subsection 8, has generally been interpreted similar to tort law, which is direct and proximate harm. For the defendant's action, the question is whether the harm would have happened and how foreseeable the harm was, so ...

Senator Ford:

The bill says "any person harmed." That indicates harm to any person. The language does not say to the victim or the victim's family; it says, "any person harmed."

I envision a situation where a person feels badly for a friend harmed by the defendant. This person—who is any person—wants to assert constitutional rights at a procedural level by requesting the judge hear his or her thoughts at sentencing.

Ms. Garvin:

The word "harmed" has come to mean direct and proximate harm from defendant's conduct. There is caselaw on what "harm" means. That said, this section is still within the judge's discretion, so the friend could ask the judge to listen to him or her—that is already there. This section asks the court to go through an analysis to determine whether the friend was harmed and if so, for the judge to exercise discretion in listening to that individual.

If the judge determines not to listen to the individual, there is no impact on the defendant, the victim or the victim's friend.

Chair Brower:

The bigger problem is not with the discretionary provision in subsection 5, where the court has discretion, but with subsection 1, paragraph (h), which provides a right to be heard.

In my experience, the prosecuting office has the discretion to decide who is a victim and who is to testify at the sentencing hearing. Under most models, the court has the right to expand that, but subsection 1, paragraph (h) gives anybody defined as a victim the right to show up—which is not at the judge's discretion.

Ms. Garvin:

Correct. The rights are attached to the term victim, which is defined in subsection 8 as a person who has suffered direct or threatened physical, psychological or financial harm.

Chair Brower:

Regarding the cultural difference between constitution and statute, there is no difference with respect to the binding effect either one has on a judge. If the Legislature says "shall," the judge has to do it. That is no less binding or enforceable than a constitutional provision.

Ms. Garvin:

It is correct to say when the Legislature says "shall," the court must; if the court does not, it is in dereliction of duty. There is a cultural difference between statute and constitution and a difference with regard to the hierarchy of law. Something imbedded into the constitution takes priority if it butts up against a statute.

Chair Brower:

If the Legislature puts any of these rights—these "shalls"—into statute, are they not just as binding on the court as if they were put into the constitution?

Ms. Garvin:

Correct, they are as binding—but they are not as weighty. Rights in statute do not carry as much weight as constitutional rights, either culturally or within the hierarchy of law. The hierarchy of law holds: constitution, statute, rule.

Chair Brower:

The hierarchy of law holds if there is a conflict.

Ms. Garvin:

Yes.

Chair Brower:

But nothing in the constitution conflicts. I will pick subsection 1, paragraph (h) as an example. Subsection 1, paragraph (h) goes into statute. Nothing in the Nevada Constitution conflicts with it. Subsection 1, paragraph (h) in statute is just as binding on the court as if it were in the Constitution.

Ms. Garvin:

That is correct; however, victims' rights in statute have not had a tremendous impact on the procedural justice in this Country.

Chair Brower:

Shame on those judges.

Ms. Garvin:

Absolutely. While statute has not had a tremendous impact, the elevation to constitutional amendment with specificity has had an impact.

Chair Brower:

Subsection 8 is the crux of the problem with S.J.R. 17. Subsection 8 defines victim very, very broadly. Very broadly. A victim is defined as "a person who suffers direct or threatened physical, psychological or financial harm as a result of the commission or attempted commission of a crime or delinquent act."

The core definition is a person—any person—who suffers direct or threatened physical, psychological or financial harm as a result. I do not know if the psychological aspect can be limited. How do we say to someone who lives in the same apartment building with 500 people where a burglary was committed that he or she has not suffered psychological harm because of the commission of that crime? How do we answer that?

Ms. Garvin:

It has been answered elsewhere with the foreseeability test, which has resulted in constraints. There have been those who tried to apply this language too broadly. The language is similar to the federal language under Title 18 USC section 3771, adopted in 2004.

An example of applying the language too broadly is a case where the parents of someone shot and killed claimed to be victims of the sale of the gun to a juvenile. The court denied this, saying it did not meet the foreseeability test. The decision is drawn similarly to tort law where there has to be direct causation. This means the defendant had to have actually done the crime and the claimant would not have been harmed but for the conduct, followed by the foreseeability that the claimant would have been harmed by that conduct.

Chair Brower:

I appreciate ongoing negotiations. Would a potential fix to what might be an overbroad definition simply say a victim is the person or persons named in the criminal complaint or representative thereof?

Ms. Garvin:

From a victims' advocacy perspective, that does not work. It is far too narrow.

Chair Brower:

In order to present the case, the victims are sometimes listed as Victim X or directly by name. Why is the case list not the list of proper victims?

Ms. Garvin:

That list leaves a large amount of discretion in the prosecutor's hands about what charges are brought. This means the prosecutor keeps that discretion despite a victim's rights. A prosecutor's charging decision dictates whether someone is a victim.

Chair Brower:

I understand, but we need to live with that reality. The prosecution has the discretion to bring charges. If the prosecution decides not to bring charges, then there are no victims. If the prosecution has that right, it seems logical the prosecution, by bringing charges and listing the victim, decides who the victims are.

Ms. Garvin:

The challenge comes with numerous victims. If there are ten victims and the prosecution decides it can prove its case quickly with five victims, it will let the other five victims fall to the side. This happens routinely with child pornography and identity theft cases. For example, it is apparent that four of the victims have a case, but the fifth victim is *de minimus*. The fifth victim will not be named in the indictment, even though there is evidence. That is one challenge.

The second challenge occurs when, if only listed in the charging document or the plea negotiation, there is a quick determination that someone is not a victim. Politics could also be involved with the prosecutor determining who is a "good" victim and who is a "bad" victim based on how and if a case can be won.

Specific language defining victim has been included in subsection 8 in an attempt to not leave this to adjudication later. Other constitutional amendments do not define victim.

Chair Brower:

If we acknowledge that much of S.J.R. 17 is already in statute and the Committee is here to make changes to statute, then we have the capability of making whatever changes you recommend to our statutes, including a statutory change. If you think a change is necessary, why a constitutional change?

Ms. Garvin:

History. History shows us statutory changes are inadequate.

Chair Brower:

Are statutory changes inadequate because judges do not follow the law?

Ms. Garvin:

That is part of it. Judges do not always follow the law. Culturally, people do not abide by statutes in the same way. We could take a poll in this room asking how many know their statutory rights as defendants versus how many know their constitutional rights. There is a significant cultural weight difference.

Additionally, when two rights compete with each other, victims are the only human beings in the criminal justice process who do not have constitutional rights. The defendant has constitutional rights ...

Chair Brower:

Let me offer an explanation for why—and I am engaging with you for the sake of discussion, because as Senator Ford said, this is a very serious issue and we want to get this right—victims have many rights under various state laws.

In the course of a criminal prosecution, the state is not seeking to do anything to the victim as it seeks to do to the defendant. The state seeks a fine, imprisonment, death. The whole point of the criminal prosecution is the state, on behalf of the people, seeks to punish the defendant. As important as the victim is to that process—and we are sensitive to the rights of that victim—the victim is not the subject of the proceeding in the same way the defendant is.

Ms. Garvin:

Historically, postadoption of the U.S. Constitution, the criminal justice system constituted the victim in the courtroom with rights, prosecuting the case and asking at sentencing what the victim wanted by way of punishment or restitution. We started to gradually move away from that system; the evolution away from that resulted in this utter eclipse of the victim's voice in the criminal justice system and the rise of the office of the public prosecutor. In that evolution, the victim became a piece of evidence by practice in a case.

Chair Brower:

You use the term utter eclipse. There are victims' rights in the Nevada Constitution, and statute holds the right of the victim to be present and heard at sentencing. It is hard to describe that as an utter eclipse.

Ms. Garvin:

Those rights came back into being specifically because of the victims' rights movement. The moment of full eclipse was in the 1970s. After that, the result was passage of statutes and early versions of constitutional amendments to bring victims back into the process.

Chair Brower:

Is Nevada turning its process around and coming back from the total eclipse?

Ms. Garvin:

Yes, but Nevada has not come back full swing yet.

Senator Ford:

I have a specific question about persons in custody in subsection 8. The proposed amendment, Exhibit D, changes "an" offense to "the" offense. Can a person in custody be a victim? If a person in custody is battered while in jail and the perpetrator is prosecuted, do these same rights benefit that person as well?

Ms. Garvin:

Yes. If an incarcerated person is raped, he or she has these rights. That edit in the amendment does this.

Senator Ford:

Subsection 8 reads, "The term does not include a person in custody" I want to be certain this subsection does not negate the rights of the convicted person if that person were a victim of abuse in jail.

Ms. Garvin:

A person in custody has access to these rights specifically because of the edit.

Kristy Oriol (Nevada Network Against Domestic Violence):

We support S.J.R. 17. I submitted written testimony (Exhibit E), but I want to highlight a few points.

Navigating the legal system and determining rights for a victim is very daunting and, at worst, terrifying and can lead to revictimization the more times a victim is not aware of his or her rights. After a traumatic event such as sexual assault or abuse by an intimate partner, victims often find themselves in a state of crisis where information is being thrown at them by attorneys, victim advocates, family members and even the abuser's family members.

Having worked with victims, I can say it is almost impossible for victims to hear you when they are still in that state of crisis. Having the Marsy's Law notification available puts necessary information in a single location where victims can locate it when they are ready to be aware of their rights.

Expanding this guarantee of rights to families of victims is important. Nevada has the sixth-highest rate in the U.S. of men killing women. Nevada has ranked in the top ten of this list for a long time. Losing a daughter, a mother or a sister is traumatizing enough. This bill allows families to stay involved with the prosecution of the defendant. Victims deserve to have these rights at a constitutional level.

John T. Jones, Jr. (Nevada District Attorneys Association):

It important to discuss victims' rights in the Legislature and equally important to get the language right. Proponents of the bill have worked readily with the Nevada District Attorneys Association, law enforcement and others to make sure the language is right. Sponsors of the bill agree S.J.R. 17 is a work in progress, and our support is contingent upon that work progressing.

We are generally supportive of each concept in the bill, but the language needs work. The Committee's questions mirror our own concerns, such as when can—or should—a victim be heard. The definition of some of the terms needs work as well as the issue of the standing of the victim. We are still working with the bill sponsors on this language.

Chuck Callaway (Las Vegas Metropolitan Police Department):

We are neutral on S.J.R. 17. We support victims' rights and any legislation that encourages victims to report crime. We are neutral on whether such laws should be left in statute or be placed into the Nevada Constitution.

I have concerns with the proposed amendments, Exhibit C and Exhibit D, particularly with subsection 1, paragraph (q), which requires law enforcement to distribute a card to "all crime victims." My concerns are of a logistical nature.

Officers already carry a multitude of cards: a driver exchange card, trespass card, Miranda card, human trafficking information card, domestic violence card and red notice card, which is an informational card for victims. To add another card—the Marsy's Law card—to this list is yet one more thing officers have to carry and hand out.

The concern comes with the term "all crime victims" and, as Chair Brower pointed out, the definition of victim in this joint resolution is broad. This broadness may be problematic for law enforcement in determining who is a victim. In a bar fistfight with both parties striking each other, both people are victims and both people are suspects. Who do we give the card to?

What happens if the victim refuses to cooperate with the police or does not want to prosecute? Are we to force the card into the hand of somebody who does not want to cooperate with the police or someone who does not want to prosecute? What happens if a drunk driver hits a bus full of passengers? Is the officer to take a significant amount of time to get on the bus and hand out a stack of cards to each particular person on the bus?

What happens if a shooting takes place in a hotel lobby on The Strip? Would the officer have to hand out a card to each person in the hotel who heard shots or witnessed the incident or who maybe feels psychologically damaged by what occurred? The bill's language is vague and creates logistical concerns for our officers in the field.

Such rights in the Nevada Constitution create liability for our officers. Will the constitutional rights of a victim be violated if an officer forgets to give out the card or refuses to give the card to those who claim they are victims?

To make the situation better for law enforcement, the officer should only be required to give information to the person who actually files a police report with the law enforcement agency. Victim information guides are given out by law enforcement when victims file reports. This guide has a list of various entities that provide assistance, such as victim advocacy, victim witness assistance and other groups. We can give victims a link to the State Website where a list of their constitutional rights can be located rather than having officers hand out a card that has subsection 1, paragraphs (a) through (q) listed.

Sean B. Sullivan (Office of the Public Defender, Washoe County):

We are neutral on S.J.R. 17. Our concerns were vetted and raised by the Committee. Most of the paragraphs in the bill are already codified. Judges already review bail considerations under *Nevada Revised Statute* 178.4853. Judges already take into consideration danger to the victim, the victim's family or the community at large as well as the likelihood of additional criminal activity or other risk factors.

Subsection 1, paragraph (h), which gives the victim standing at any criminal proceeding, is too broad. Giving the victim standing in any criminal procedure may cause further unnecessary delays, not only for the defendant but also for the victim and all parties in the proceeding.

The definition of victim in subsection 8 is too broad. The victim impact statement, codified in NRS 176.015, affords the victim and the victim's family the right to be heard and designates when they can be heard, particularly at sentencing.

Steve Yeager (Office of the Public Defender, Clark County):

I appreciate the discussion about how this bill interplays with existing constitutional rights.

A proposal in front of the Hawaii legislature said "No right in this section shall be construed to supersede the constitutional rights of the offender." The proposal did not pass, but such a clause would establish the hierarchy of the constitutional rights of the accused if in conflict with a victim's rights.

Subsection 1, paragraph (h) talks about a victim having a right to participate or be heard at any proceeding. Clark County handles approximately 40 to 75 cases a day. We probably already spend too much time in court; I am concerned we will have to add resources if implementing paragraph (h) results in extended court calendars.

Andres Moses (Eighth Judicial District Court, Clark County):

We are neutral on S.J.R. 17. We are generally supportive of victims' rights.

The Eighth Judicial District Court is a high-volume court, and we are concerned about the practical implications of this bill. The sections of major concern regarding victims having standing and having the right to be heard in any proceeding have already been noted in testimony.

We suggest those sections be examined further and perhaps include some elements of judicial discretion to allow the judge to limit when the victim can and cannot speak.

Vanessa Spinazola (American Civil Liberties Union of Nevada):

We oppose S.J.R. 17 as a constitutional amendment. Many of these rights already exist in statute; elevating them to a constitutional level will conflict with the rights of the accused. This issue has been discussed already. There will be litigation in the criminal context whether the defendant is sitting in jail or having his or her trial delayed.

We are concerned about the phrase "timely restitution" in both proposed amendments and are not sure what it means. What is timely for the victim may not be timely in a death penalty case. We have people who have been on death row for 30 years. Does that mean that person would receive the death penalty at an earlier date? Does that mean we take away rights of appeals? When we elevate these rights to a constitutional level, we have conflicts.

Nevada Revised Statute 217.220 has a number of exclusions for who is considered a victim. One of the exclusions is undocumented immigrants. If you are a noncitizen, you cannot access the Fund for Compensation of Victims of Crime. Statute also exempts those who do not cooperate with law enforcement, prisoners or coconspirators. There are five statutory exemptions for victims.

There was discussion earlier about constitutional rights trumping statute, but I am concerned those exemptions, as part of Nevada law for such a long time, will present problems.

Finally, if we include immigrants, the Marsy's Law notification card needs to be translated into a language victims can understand. In the state of California, the Marsy's Law card is translated into 17 different languages.

Senator Segerblom:

Do you know if penalties given to criminals are higher in states that have these constitutional amendments?

Ms. Spinazola:

I do not know the answer to that question. Putting victims' rights into state constitutions is a new concept and its application is still being worked out in the courts.

Chair Brower:

We will close the hearing on S.J.R. 17 and open the hearing on S.B. 454.

SENATE BILL 454: Revises provisions relating to criminal justice. (BDR 14-559)

The Honorable James Hardesty (Chief Justice, Nevada Supreme Court):

As the Vice Chair of the Advisory Commission on the Administration of Justice, I had the pleasure of serving on the Commission with Senators Segerblom and Brower. Senate Bill 454 can be divided into four primary parts, each part unanimously adopted by the Commission. I will approach each part separately.

The first part of S.B. 454 addresses the recommendation of the Commission that there be a uniform pretrial risk assessment tool. Section 1 of S.B. 454 reflects testimony the Commission took during its hearings on risk assessment tools used by the Division of Parole and Probation (P&P) of the Department of Public Safety. Provisions in section 1 do not apply to the assessment tool used by P&P. In the Commission's assessment, the tool in section 1 should be used pretrial by a justice of the peace or a district court judge to determine if a defendant should be released on recognizance (ROR) or be given a bail release.

The second part of S.B. 454 is a general concept to transfer and centralize collection responsibilities for obligations owed by defendants in criminal cases to

SJR17 Amendments

Strike 23.1.(d) and replace with "To prevent the disclosure of confidential information or records which could be used to locate or harass the victim or the victims family or which disclose confidential communications made in the course of medial or counseling treatment, or which are otherwise privileged or confidential by law."

Strike 23.1.(e) and replace with "To refuse an interview, deposition or discovery request and to set reasonable conditions on the conduct of any such interview tow which the victim consents."

Strike 23.1.(f) and replace with "To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding the arrest of the defendant if known by the prosecutor, the charges filed, the determination of whether to extradite the defendant and, upon request, it be notice of and informed at all critical stages and before any pretrial disposition of the case.

Strike 23.1.(m) and replace with "Full and timely restitution."

Strike 23.1.(o) and replace with "To be informed of all post-conviction proceedings, to participate in the post-conviction process, to provide information to the parole authority tone considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender."

Strike 23.1.(q) and replace with "To be informed of the rights enumerated in paragraphs (a) through (p). This information shall be made available to the general public and specifically provided to all crime victims in what is referred to as a Marsy's Card."

Strike 23.3 and replace with "Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employe for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of violation of this section or any statute enacted by the Legislature pursuant thereto."

In section 23.8 the final sentence refers to “a person in custody for an offense”. It should be “a person in custody for the offense”.

Finally, in section 23.1.(a) there is a specific mention of the criminal and juvenile process. That distinction is not made throughout the language. It has been recommended by a number of respected experts that we intentionally maintain consistency to ensure that the rights are afforded equally in both adult and juvenile criminal proceedings.

For the purpose of clarity, the California Marsy’s Card can be found [here](#).

SENATE JOINT RESOLUTION NO. 17—SENATORS ROBERSON,
HARRIS, FARLEY; HARDY AND SETTELMAYER

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

Under the Nevada Constitution, the Legislature is required to provide by law for certain rights of the victims of crimes, in particular, the right to be informed of the status of criminal proceedings concerning those crimes, the right to be present at public hearings concerning those crimes and the right to be heard at all proceedings for the sentencing or release of persons convicted of those crimes. (Nev. Const. Art. 1, § 8)

This resolution proposes to amend the Nevada Constitution to eliminate the existing provisions of Article 1, section 8, concerning victims' rights and to add a new section that sets forth an expanded list of such rights in the form of a victims' bill of rights. The new section is modeled after the victims' bill of rights set forth in the California Constitution as it was amended in 2008 by what is commonly referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 23, be added to Article 1 of the Nevada Constitution to read as follows:

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation,

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1 *harassment and abuse, throughout the criminal or juvenile*
2 *justice process.*

3 (b) *To be reasonably protected from the defendant and*
4 *persons acting on behalf of the defendant.*

5 (c) *To have the safety of the victim and the victim's*
6 *family **considered as a factor** in fixing the amount of bail*
and release conditions for the defendant.

7 (d) *To prevent the disclosure of confidential information*
8 *or records **to the defendant**, the defendant's attorney, or any*
9 *other person acting on behalf of the defendant, which could*
10 *be used to locate or harass the victim or the victim's family*
11 ~~*or which disclose confidential communications made in the*~~
12 ~~*course of medical or counseling treatment, or which are*~~
13 ~~*otherwise privileged or confidential by law.*~~

14 ~~*(e) To refuse an interview, deposition or discovery*~~
15 ~~*request unless, under a court order by the defendant, the*~~
~~*defendant's attorney or any other person acting on behalf*~~
~~*of the defendant, and to set reasonable conditions on the*~~
~~*conduct of any such interview to which the victim consents.*~~
To refuse an interview or deposition request, unless under
court order, and to set reasonable conditions on the conduct
of any such interview to which the victim consents.

16 (f) *To reasonable notice of and to reasonably confer*
17 *with the prosecuting agency, upon request, regarding the*
18 *arrest of the defendant if known by the prosecutor,*
19 *the charges filed, ~~the determination whether to extradite the~~*
20 ~~*defendant*~~ ***any plea agreement** and, upon request, to be*
notified of and informed
21 *before any pretrial disposition of the case.*

22 (g) *To reasonable notice of all public proceedings,*
23 *including delinquency proceedings, upon request, at which*
24 *the defendant and the prosecutor are entitled to be present*
25 *and of all parole or other postconviction release*
26 *proceedings, and to be present at all such proceedings.*

27 (h) *To be heard, upon request, at any proceeding,*
28 *including any delinquency proceeding, involving a*
29 *postarrest release decision, plea **hearing**, sentencing,*
postconviction
30 *release decision or any proceeding in which a right of the*
31 *victim is at issue.*

32 (i) ~~*To a speedy trial and a prompt and final conclusion*~~
33 ~~*of the case and any related postjudgment proceedings. The*~~
right to timely disposition of the case following the arrest of
the accuse.

34 (j) *To provide information to any public officer or*

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employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

~~(k) To receive, upon request, the report of any presentence investigation when available to the defendant, except for those portions made confidential by law.~~

(l) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

~~(m) To restitution as provided by law.~~ **Full and timely restitution.**

(n) To the prompt return of **legal** property when no longer needed as evidence.

~~(o) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.~~ **To be informed of all post conviction proceedings to participate and/or to provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or release of the offender.**

(p) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

(q) To be informed of the rights enumerated in paragraphs (a) to ~~(p)~~ (r). **This information shall be made available to the general public and specifically provided to all crime victims in what is referred to as a Marsy's Card.**

(r) All monetary payments, money and property collected from any person who has been ordered to make restitution must first be applied to pay amounts ordered as restitution to the victim.

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19 2. ~~A victim, the retained attorney of a victim, a lawful~~
20 ~~representative of the victim or the prosecuting attorney upon~~
21 ~~request of the victim may enforce the rights enumerated in~~
22 ~~subsection 1 in any trial or appellate court with jurisdiction~~
23 ~~over the case as a matter of right. The court shall act~~
24 ~~promptly on such a request. The victim has standing to~~
assert the rights enumerated in this section in any court with
jurisdiction over the case. The court shall promptly rule on a
victim's request. The accused does not have standing to
assert the rights of a victim. Nothing in this section shall be
construed to alter the powers, duties, and responsibilities of
the prosecuting attorney. The victim does not have party
status in a criminal prosecution.

25 3. *Except as otherwise provided in subsection 4, no*
26 *person may maintain an action against this State or any*
27 *public officer or employee for damages or injunctive,*
28 *declaratory or other legal or equitable relief on behalf of a*
29 *victim of a crime as a result of a violation of this section or*
30 *any statute enacted by the Legislature pursuant thereto. No*
31 *such violation authorizes setting aside a conviction or*
32 *sentence or continuing or postponing a criminal*
33 *proceeding.*

34 4. ~~A person may maintain an action to compel a public~~
35 ~~officer or employee to carry out any duty required by this~~
36 ~~section or any statute enacted by the Legislature pursuant~~
37 ~~thereto.~~

38 5. *The granting of these rights to victims must not be*
39 *construed to deny or disparage other rights possessed by*
40 *victims. A court in its discretion may extend the right to be*
41 *heard at sentencing to any person harmed by the defendant.*
42 *A parole authority shall extend the right to be heard at a*
43 *parole hearing to any person harmed by the offender.*

SJR17

1 ~~6. At the regular session of the Legislature immediately~~
2 ~~following the approval and ratification of this section by the~~
3 ~~people, the Legislature shall provide by law that:~~

4 ~~(a) All persons who suffer losses as a result of criminal~~
5 ~~activity have the right to seek and secure restitution from~~
6 ~~the persons convicted of the crimes causing the losses they~~
7 ~~suffer.~~

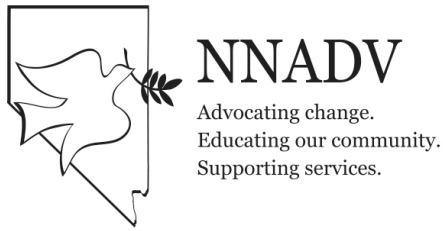
8 ~~(b) Restitution must be ordered from the convicted~~
9 ~~wrongdoer in every case, regardless of the sentence or~~
10 ~~disposition imposed, in which a victim suffers a loss.~~

11 ~~(c) All monetary payments, money and property~~
12 ~~collected from any person who has been ordered to make~~
13 ~~restitution must be first applied to pay the amounts ordered~~
14 ~~as restitution to the victim.~~

15 7. The Legislature shall by law provide any other
16 measure necessary or useful to secure to victims of crime
17 the benefit of the rights set forth in this section.

18 8. As used in this section, "victim" means a person who
19 suffers direct or threatened physical, psychological or
20 financial harm as a result of the commission or attempted
21 commission of a crime or delinquent act. The term also
22 includes, without limitation, the person's spouse, parents,
23 children, siblings or guardian, and includes a lawful
24 representative of a victim who is deceased, a minor or
25 physically or psychologically incapacitated. The term does
26 not include a person in custody for ~~an~~ the offense, the
27 accused
28 or a person whom the court finds would not act in the best
interests of a minor victim.

SJR17



April 2, 2015

Chairman Gregory Brower
Senate Judiciary Committee
Nevada State Assembly
Legislative Building
Carson City, NV 89701

RE: SJR 17- SUPPORT

Chairman Brower and Members of the Committee;

My name is Kristy Oriol. I am the Policy Specialist at the Nevada Network Against Domestic Violence (NNADV), the statewide coalition of domestic violence programs in Nevada. I am here today to express NNADV's support for SJR 17, which would provide constitutional protections for victims of crime. These protections will provide additional safety and support for victims of domestic and sexual violence who participate in the criminal justice system.

Navigating the legal system and determining rights is to say the least an overwhelming process for victims. At worst, it is terrifying and can lead to repeated re-victimization. After a traumatic event such as being abused or sexually assaulted by an intimate partner, the last thing a victim often thinks of is her or his constitutional rights. If a victim does decide to engage the legal system, the process can be incredibly confusing. Victim advocates in Nevada provide a necessary support for victims in navigating the legal system, however many victims do not ever make it to that point due to fear of reporting and a lack of clarity of the legal process. SJR 17 would inform victims of their rights and offer some comfort during a very traumatic time.

In addition to the benefit SJR 17 offers to direct victims, it also guarantees the constitutional rights for victim families. Nevada has the sixth highest rate among U.S. states for women being killed by men, according to the latest Violence Policy Center report. Losing a daughter, mother or sister at the hands of an intimate partner is a devastating reality that Nevada families face each year. SJR 17 would allow these family members to stay involved with the prosecution of the defendant and know their rights.

We are grateful to Senator Roberson and the supporters of SJR 17. Nevada victims and their families deserve to know what rights are afforded to them. During times of crisis, it is almost impossible for victims to retain everything that is told to them by law enforcement, advocates, family and attorneys. SJR 17 puts all of this information in a single location for the victim to review when he or she is ready. We strongly urge your support.

Sincerely,

Kristy Oriol
Policy Specialist, NNADV
530-414-6729

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
April 10, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:04 p.m. on Friday, April 10, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary

Chair Brower:

I will open the work session on Senate Bill (S.B.) 255.

SENATE BILL 255: Makes various changes to provisions governing the termination of parental rights. (BDR 11-637)

Patrick Guinan (Policy Analyst):

I have a work session document summarizing the bill and explaining Proposed Amendment 6238 offered by Senator Hammond (Exhibit C).

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Chair Brower:

I will open the work session on Senate Joint Resolution (S.J.R.) 17.

SENATE JOINT RESOLUTION 17: Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Mr. Guinan:

I have a work session document that summarizes the joint resolution and describes the amendment offered by Senators Roberson and Brower in consultation with the law enforcement community (Exhibit E).

Chair Brower:

A lot of work went into this amendment by law enforcement, the criminal defense bar, prosecuting attorneys and others who deal with these issues day in and day out. I wanted to make sure everyone's concerns with the original language were vetted and sorted out. The amendment in Exhibit E is a good end result. We are all concerned with the rights of victims of crimes. There is a provision in Nevada's Constitution and statutes; this simply offers some detail.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED S.J.R. 17.

SENATOR HAMMOND SECONDED THE MOTION.

Senator Ford:

I commend those who worked on the resolution to get it into its current format. Unfortunately, I am still unable to support S.J.R. 17. We already have protection for victims in the Nevada Constitution and statutes. Just as I was leaving my office this afternoon, a news report reminded me of one of the reasons it is dangerous to proceed on this route. A gentleman who had been on Death Row for 30 years was just exonerated and set free. If you take a look at the speedy trial and prompt final resolution component of this measure, I wonder how a plaintiff's right to timely disposition would have affected that gentleman. That adds to my rationale for not wanting to pursue this measure at this juncture.

Senate Committee on Judiciary
April 10, 2015
Page 4

Chair Brower:

The speedy trial aspect of the proposed resolution was the subject of discussions I took part in. I am satisfied that nothing in S.J.R. 17 would alter the existing speedy trial rules in a way that would be prejudicial to defendants. I am comfortable with it.

THE MOTION PASSED. (SENATORS FORD AND SEGERBLOM VOTED NO.)

* * * * *

Chair Brower:

The meeting is adjourned at 3:53 p.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

Senate Committee on Judiciary

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

April 10, 2015

SENATE JOINT RESOLUTION 17

Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Sponsored by: Senators Roberson, Harris, Farley, et al.

Date Heard: April 2, 2015

Fiscal Impact: Effect on Local Government: No.

Effect on the State: No.

Senate Joint Resolution 17 amends the *Nevada Constitution* by eliminating existing victim's rights provisions found in Article 1, Section 8, and replacing them with an expanded set of provisions that could be referred to as a victim's bill of rights. These rights include, but are not limited to:

- Fairness, dignity, freedom from intimidation, harassment, and abuse throughout the criminal or justice process;
- Reasonable protection from a defendant or persons acting on a defendant's behalf;
- Protection from the defendant of confidential information that may be used to harass the victim or the victim's family;
- The right to refuse interview, deposition, or discovery requests from the defendant or his or her attorney;
- Notice of and knowledge about the arrest of a defendant and the opportunity to confer with the prosecuting agency;
- Reasonable notice of all public proceedings at which the defendant and prosecutor are entitled to be present;
- A speedy trial and prompt final conclusion of the case and postjudgment proceedings;
- To be informed of conviction, sentencing, disposition, and scheduled release date of the defendant;
- Restitution and return of property;
- To be informed of all parole procedures and have the safety of the victim, victim's family, and public considered prior to any parole or postjudgment decision is made; and
- To be informed of all victims' rights enumerated in the resolution.

Amendments: Senator Roberson and Chairman Brower, in consultation with the law enforcement community, have offered an amendment to the resolution; the pertinent portions of which are provided on the following page.

SJR 17 – Marsy’s Law
Final Amendments
Offered by Senator Brower
April 9, 2015, 10:22:42 AM

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim’s family considered **as a factor** in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records **to the defendant, the defendant’s attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim’s family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.**

(e) To refuse an interview **or deposition or discovery request, unless under court order — or subpoena, by the defendant, the defendant’s attorney or any other person acting on behalf of the defendant,** and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(f) ~~To reasonable notice of and~~ To reasonably confer with the prosecuting agency, upon request, regarding the arrest of the defendant if known by the prosecutor, ~~the charges filed, any plea agreement the determination of whether to extradite the defendant and upon request, to be notified and informed before any pretrial disposition of the case.~~

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present, and of all parole or other post conviction release proceedings, and to be present at all such proceedings.

(h) To be heard, upon request **and at the discretion of the court,** at any proceeding, including any delinquency proceeding, involving a post arrest release decision, ~~plea hearing,~~ sentencing, post conviction release decision or any proceeding in which a right of the victim is at issue.

(i) **The right to timely disposition of the case following the arrest of the accused.**

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim’s family and any sentencing recommendations before the sentencing of the defendant.

(k) ~~To receive, upon request, the report of any presentence investigation when available to the defendant, except for portions made confidential by law.~~

(l) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(m) Full and timely restitution.

(n) To the prompt return of legal property when no longer needed as evidence.

(o) To be informed of all post-conviction proceedings, to participate and/or, to provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(p) To have the safety of the victim, the victim's family and the general public considered before any parole or other post judgment release decision is made.

(q) To be informed of the rights enumerated in paragraphs (a) through (r). This information shall be made available to the general public and specifically provided to all crime victims. ~~in what is referred to as a Marsy's Card.~~

(r) All monetary payments, money and property collected from any person who has been ordered to make restitution must first be applied to pay the amounts ordered as restitution to the victim.

2. The victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case. The court shall promptly rule on a victim's request. The accused does not have standing to assert the rights of a victim. Nothing in this Section shall be construed to alter the powers, duties, and responsibilities of the prosecuting attorney. The victim does not have party status in a criminal prosecution.

3. Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.

4. A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the legislature pursuant thereto.

5. The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. ~~A court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant.~~ A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

6. Deleted section 6 in entirety moved subsection c to new subsection 1 (r).

7. The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.

8. As used in this section, “victim” ~~means a person who suffers direct or threatened physical, psychological or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term also includes, without limitation, the person’s spouse, parents, children, siblings or guardian, and includes a lawful representative of a victim who is deceased, a minor or physically or psychologically incapacitated. The term does not include a person in custody for an the offense, the accused or a person whom the court finds would not act in the best interests of a minor victim.~~ Any person directly and proximately harmed by the commission of an offense under [Nevada criminal code]. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may also be a crime victim under this section, but in no event shall the defendant be named as such guardian or representative.

9. Nothing in this section is intended or shall be interpreted to infringe upon the federal or state constitutional rights of the defendant.

THE SEVENTY-SECOND DAY

CARSON CITY (Tuesday), April 14, 2015

Senate called to order at 12:29 p.m.

President Hutchison presiding.

Roll called.

All present.

Prayer by Rabbi Evon J. Yakar.

Thank you for your service to this State of Nevada; and, thank you for the honor of sharing these words of blessing.

The sages of the Jewish tradition debate how we can determine when morning has arrived. One claims it is when one can distinguish blue from white. Another states it is when you can differentiate between a wolf and a dog. After more debate, a great sage, Rabbi Akiva, settles the question and says, "When one can identify a friend."

While differences of opinion often divide us and those we represent, awareness that we have a bond is, and must be foremost in our work. For we all have something in common, each of us is endowed with a soul and while they are all unique, we bear the signature of being human. This charges us to ensure we care for all those who put their trust in us. May we honor this bond that makes us human by recognizing this reality.

Tomorrow, Wednesday, April 15th, is Yom Ha Shoah. The day in the Jewish tradition we remember the terrors of the Holocaust. A time when our fellow human beings failed to recognize and identify friends and when the human race failed to honor the souls with which each of us is endowed. With all of my being, I pray that this kind of past remains securely there, in the past. And, that the time when we recognize and identify all the differences among this State as being part of the magnificent tapestry that is Nevada, the United States and the human race remains into our future.

I pray that this legislative body continues to ensure that the souls within each of us fulfill its mission in securing a healthy, tolerant and prosperous future. Among the morning prayers in Judaism we say, I am grateful before the Living and Eternal God, who has returned to me my soul in mercy.

May each of us be grateful for the souls that make us unique and treasure the charge to honor that soul in every other we encounter, represent and with whom we share this great State of Nevada.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Commerce, Labor and Energy, to which were referred Senate Bills Nos. 153, 242, 246, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JAMES A. SETTELMAYER, *Chair*

Mr. President:

Your Committee on Government Affairs, to which were referred Senate Bills Nos. 477, 478, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

PETE GOICOECHEA, *Chair*

SENATE IN SESSION

At 6:45 p.m.

President Hutchison presiding.

Quorum present.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Commerce, Labor and Energy, to which were referred Senate Bills Nos. 194, 371, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JAMES A. SETTELMAYER, *Chair*

Mr. President:

Your Committee on Education, to which were referred Senate Bills Nos. 211, 220, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BECKY HARRIS, *Chair*

Mr. President:

Your Committee on Health and Human Services, to which was referred Senate Bills Nos. 48, 422, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOSEPH P. HARDY, *Chair*

Mr. President:

Your Committee on Judiciary, to which were referred Senate Bills Nos. 138, 167, 174, 320, 388, 395, 445, 446, 464; Senate Joint Resolution No. 17, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

GREG BROWER, *Chair*

Mr. President:

Your Committee on Revenue and Economic Development, to which was referred Senate Bill No. 94, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Revenue and Economic Development, to which was re-referred Senate Bill No. 252, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MICHAEL ROBERSON, *Chair*

Mr. President:

Your Committee on Transportation, to which were referred Senate Bills Nos. 354, 457, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

SCOTT HAMMOND, *Chair*

MOTIONS, RESOLUTIONS AND NOTICES

Senator Kieckhefer moved that Senate Bill No. 153 be taken from the Second Reading File and placed on the Secretary's desk.

Motion carried.

Senator Kieckhefer moved that Senate Bill No. 478 be taken from the Second Reading File and placed on the Secretary's desk.

Motion carried.

(b) Possession in the presence of the person's parent, spouse or legal guardian who is 21 years of age or older;

(c) Possession in accordance with a prescription issued by a person statutorily authorized to issue prescriptions;

(d) Possession in private clubs or private establishments; or

(e) The selling, handling, serving or transporting of alcoholic beverages by a person in the course of his or her lawful employment by a licensed manufacturer, wholesaler or retailer of alcoholic beverages.

~~{Sec. 2.}~~ *Sec. 3.* The provisions of section 2 of this act apply to a person who has been charged but not convicted before the effective date of this act.

~~{Sec. 3.}~~ *Sec. 4.* This act becomes effective upon passage and approval.

Senator Brower moved the adoption of the amendment.

Remarks by Senator Brower.

The amendment adds new language to the bill prohibiting the sale, purchase, possession or use of powdered alcohol and makes a violation of these provisions a misdemeanor.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Joint Resolution No. 17.

Resolution read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 449.

SUMMARY—Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

Under the Nevada Constitution, the Legislature is required to provide by law for certain rights of the victims of crimes, in particular, the right to be informed of the status of criminal proceedings concerning those crimes, the right to be present at public hearings concerning those crimes and the right to be heard at all proceedings for the sentencing or release of persons convicted of those crimes. (Nev. Const. Art. 1, § 8)

This resolution proposes to amend the Nevada Constitution to eliminate the existing provisions of Article 1, section 8, concerning victims' rights and to add a new section that sets forth an expanded list of such rights in the form of a victims' bill of rights. The new section is modeled after the victims' bill of rights set forth in the California Constitution as it was amended in 2008 by what is commonly referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 23, be added to Article 1 of the Nevada Constitution to read as follows:

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records to the defendant ~~or the defendant's attorney, or any other person acting on behalf of the defendant,~~ which could be used to locate or harass the victim or the victim's family ~~for which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.~~

(e) To refuse an interview ~~or deposition for discovery~~ request ~~by the defendant, the defendant's attorney or any other person acting on behalf of the defendant,~~ unless under court order or subpoena, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(f) To ~~reasonable notice of and to~~ reasonably confer with the prosecuting agency, upon request, regarding the ~~arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant and, upon request, to be notified of and informed before any pretrial disposition of the~~ case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be heard, upon request ~~or~~ and at the discretion of the court, at any proceeding, including any delinquency proceeding, involving a postarrest release decision, ~~plea~~ sentencing, postconviction release decision or any proceeding in which a right of the victim is at issue.

(i) To ~~a speedy trial and a prompt and final conclusion of the case and any related postjudgment proceedings,~~ the timely disposition of the case following the arrest of the defendant.

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(k) ~~To receive, upon request, the report of any presentence investigation when available to the defendant, except for those portions made confidential by law.~~

~~—(l) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.~~

~~[(m)] (l) To full and timely restitution, as provided by law.~~

~~[(n)] (m) To the prompt return of legal property when no longer needed as evidence.~~

~~[(o)] (n) To be informed of all parole procedures, postconviction proceedings, to participate in the parole process, to and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.~~

~~[(p)] (o) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.~~

~~[(q)] (p) To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim.~~

~~(q) To be specifically informed of the rights enumerated in paragraphs (a) to (p), inclusive, this section, and to have information concerning those rights be made available to the general public.~~

~~2. A victim of, the retained attorney of a victim, a lawful representative of the victim or the prosecuting attorney upon request of the victim may enforce has standing to assert the rights enumerated in subsection 1, this section in any trial or appellate court with jurisdiction over the case. as a matter of right. The court shall act promptly rule on such a victim's request. A defendant does not have standing to assert the rights of his or her victim. This section does not alter the powers, duties or responsibilities of a prosecuting attorney. A victim does not have the status of a party in a criminal proceeding.~~

~~3. Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction for sentence or continuing or postponing a criminal proceeding.~~

~~4. A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.~~

~~5. The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.~~

~~6. [At the regular session of the Legislature immediately following the approval and ratification of this section by the people, the Legislature shall provide by law that:~~

~~(a) All persons who suffer losses as a result of criminal activity have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.~~

~~(b) Restitution must be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a victim suffers a loss.~~

~~(c) All monetary payments, money and property collected from any person who has been ordered to make restitution must be first applied to pay the amounts ordered as restitution to the victim.~~

~~7. The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.~~

~~[8.] 7. As used in this section, "victim" means fa person who suffers direct or threatened physical, psychological or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term also includes, without limitation, the person's spouse, parents, children, siblings or guardian, and includes a lawful representative of a victim who is deceased, a minor or physically or psychologically incapacitated. The term does not include a person in custody for an offense, the accused or a person whom the court finds would not act in the best interests of a minor victim.] any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.~~

~~8. This section is not intended and shall not be interpreted to infringe upon a right guaranteed to the defendant by the United States Constitution or the Nevada Constitution.~~

And be it further

RESOLVED, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused

shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

~~2. [The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~5.] No person shall be deprived of life, liberty, or property, without due process of law.~~

~~[6.] 3. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.~~

Senator Brower moved the adoption of the amendment.

Remarks by Senator Brower.

The amendment makes several revisions to section 1 of the resolution, which sets forth the "Victim's Bill of Rights" that is to be amended into section 23, Article 1 of the *Nevada Constitution* replacing current constitutional language on the subject. These revisions are intended to bring the constitutional amendment into conformity with current Nevada statute and court procedure in the areas addressed by the resolution.

Amendment adopted.

Resolution ordered reprinted, engrossed and to third reading.

Senator Kieckhefer moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 7:29 p.m.

SENATE IN SESSION

At 7:34 p.m.

SENATE JOINT RESOLUTION NO. 17—SENATORS ROBERSON,
HARRIS, FARLEY; HARDY AND SETTELMAYER

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

1 Under the Nevada Constitution, the Legislature is required to provide by law
2 for certain rights of the victims of crimes, in particular, the right to be informed of
3 the status of criminal proceedings concerning those crimes, the right to be present
4 at public hearings concerning those crimes and the right to be heard at all
5 proceedings for the sentencing or release of persons convicted of those crimes.
6 (Nev. Const. Art. 1, § 8)
7 This resolution proposes to amend the Nevada Constitution to eliminate the
8 existing provisions of Article 1, section 8, concerning victims' rights and to add a
9 new section that sets forth an expanded list of such rights in the form of a victims'
10 bill of rights. The new section is modeled after the victims' bill of rights set forth in
11 the California Constitution as it was amended in 2008 by what is commonly
12 referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

1 RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF
2 NEVADA, JOINTLY, That a new section, designated Section 23, be
3 added to Article 1 of the Nevada Constitution to read as follows:
4 *Sec. 23. 1. Each person who is the victim of a crime*
5 *is entitled to the following rights:*
6 *(a) To be treated with fairness and respect for his or her*
7 *privacy and dignity, and to be free from intimidation,*



1 *harassment and abuse, throughout the criminal or juvenile*
2 *justice process.*

3 *(b) To be reasonably protected from the defendant and*
4 *persons acting on behalf of the defendant.*

5 *(c) To have the safety of the victim and the victim's*
6 *family considered as a factor in fixing the amount of bail*
7 *and release conditions for the defendant.*

8 *(d) To prevent the disclosure of confidential information*
9 *or records to the defendant which could be used to locate or*
10 *harass the victim or the victim's family.*

11 *(e) To refuse an interview or deposition request, unless*
12 *under court order or subpoena, and to set reasonable*
13 *conditions on the conduct of any such interview to which*
14 *the victim consents.*

15 *(f) To reasonably confer with the prosecuting agency,*
16 *upon request, regarding the case.*

17 *(g) To reasonable notice of all public proceedings,*
18 *including delinquency proceedings, upon request, at which*
19 *the defendant and the prosecutor are entitled to be present*
20 *and of all parole or other postconviction release*
21 *proceedings, and to be present at all such proceedings.*

22 *(h) To be heard, upon request and at the discretion of*
23 *the court, at any proceeding, including any delinquency*
24 *proceeding, involving a postarrest release decision,*
25 *sentencing, postconviction release decision or any*
26 *proceeding in which a right of the victim is at issue.*

27 *(i) To the timely disposition of the case following the*
28 *arrest of the defendant.*

29 *(j) To provide information to any public officer or*
30 *employee conducting a presentence investigation*
31 *concerning the impact of the offense on the victim and the*
32 *victim's family and any sentencing recommendations before*
33 *the sentencing of the defendant.*

34 *(k) To be informed, upon request, of the conviction,*
35 *sentence, place and time of incarceration, or other*
36 *disposition of the defendant, the scheduled release date of*
37 *the defendant and the release of or the escape by the*
38 *defendant from custody.*

39 *(l) To full and timely restitution.*

40 *(m) To the prompt return of legal property when no*
41 *longer needed as evidence.*

42 *(n) To be informed of all postconviction proceedings, to*
43 *participate and provide information to the parole authority*
44 *to be considered before the parole of the offender and to be*



1 notified, upon request, of the parole or other release of the
2 offender.

3 (o) To have the safety of the victim, the victim's family
4 and the general public considered before any parole or
5 other postjudgment release decision is made.

6 (p) To have all monetary payments, money and property
7 collected from any person who has been ordered to make
8 restitution be first applied to pay the amounts ordered as
9 restitution to the victim.

10 (q) To be specifically informed of the rights enumerated
11 in this section, and to have information concerning those
12 rights be made available to the general public.

13 2. A victim has standing to assert the rights
14 enumerated in this section in any court with jurisdiction
15 over the case. The court shall promptly rule on a victim's
16 request. A defendant does not have standing to assert the
17 rights of his or her victim. This section does not alter the
18 powers, duties or responsibilities of a prosecuting attorney.
19 A victim does not have the status of a party in a criminal
20 proceeding.

21 3. Except as otherwise provided in subsection 4, no
22 person may maintain an action against this State or any
23 public officer or employee for damages or injunctive,
24 declaratory or other legal or equitable relief on behalf of a
25 victim of a crime as a result of a violation of this section or
26 any statute enacted by the Legislature pursuant thereto. No
27 such violation authorizes setting aside a conviction.

28 4. A person may maintain an action to compel a public
29 officer or employee to carry out any duty required by this
30 section or any statute enacted by the Legislature pursuant
31 thereto.

32 5. The granting of these rights to victims must not be
33 construed to deny or disparage other rights possessed by
34 victims. A parole authority shall extend the right to be heard
35 at a parole hearing to any person harmed by the offender.

36 6. The Legislature shall by law provide any other
37 measure necessary or useful to secure to victims of crime
38 the benefit of the rights set forth in this section.

39 7. As used in this section, "victim" means any person
40 directly and proximately harmed by the commission of a
41 criminal offense under any law of this State. If the victim is
42 less than 18 years of age, incompetent, incapacitated or
43 deceased, the term includes the legal guardian of the victim
44 or a representative of the victim's estate, member of the
45 victim's family or any other person who is appointed by the



1 *court to act on the victim's behalf, except that the court*
2 *shall not appoint the defendant as such a person.*

3 *8. This section is not intended and shall not be*
4 *interpreted to infringe upon a right guaranteed to the*
5 *defendant by the United States Constitution or the Nevada*
6 *Constitution.*

7 And be it further

8 RESOLVED, That Section 8 of Article 1 of the Nevada
9 Constitution be amended to read as follows:

10 Sec. 8. 1. No person shall be tried for a capital or
11 other infamous crime (except in cases of impeachment, and in
12 cases of the militia when in actual service and the land and
13 naval forces in time of war, or which this State may keep,
14 with the consent of Congress, in time of peace, and in cases
15 of petit larceny, under the regulation of the Legislature)
16 except on presentment or indictment of the grand jury, or
17 upon information duly filed by a district attorney, or Attorney
18 General of the State, and in any trial, in any court whatever,
19 the party accused shall be allowed to appear and defend in
20 person, and with counsel, as in civil actions. No person shall
21 be subject to be twice put in jeopardy for the same offense;
22 nor shall he be compelled, in any criminal case, to be a
23 witness against himself.

24 2. ~~{The Legislature shall provide by law for the rights of~~
25 ~~victims of crime, personally or through a representative, to~~
26 ~~be:~~

27 ~~—(a) Informed, upon written request, of the status or~~
28 ~~disposition of a criminal proceeding at any stage of the~~
29 ~~proceeding;~~

30 ~~—(b) Present at all public hearings involving the critical~~
31 ~~stages of a criminal proceeding; and~~

32 ~~—(c) Heard at all proceedings for the sentencing or release~~
33 ~~of a convicted person after trial.~~

34 ~~—3. Except as otherwise provided in subsection 4, no~~
35 ~~person may maintain an action against the State or any public~~
36 ~~officer or employee for damages or injunctive, declaratory or~~
37 ~~other legal or equitable relief on behalf of a victim of a crime~~
38 ~~as a result of a violation of any statute enacted by the~~
39 ~~Legislature pursuant to subsection 2. No such violation~~
40 ~~authorizes setting aside a conviction or sentence or continuing~~
41 ~~or postponing a criminal proceeding.~~

42 ~~—4. A person may maintain an action to compel a public~~
43 ~~officer or employee to carry out any duty required by the~~
44 ~~Legislature pursuant to subsection 2.~~



1 ~~—5.1~~ No person shall be deprived of life, liberty, or
2 property, without due process of law.
3 ~~[6.1]~~ 3. Private property shall not be taken for public use
4 without just compensation having been first made, or secured,
5 except in cases of war, riot, fire, or great public peril, in
6 which case compensation shall be afterward made.

H



THE SEVENTY-THIRD DAY

CARSON CITY (Wednesday), April 15, 2015

Senate called to order at 12:27 p.m.

President Hutchison presiding.

Roll called.

All present.

Prayer by the Chaplain, Minister Barbara Jones.

Father in Heaven, as General George Washington carried his white flag with "An Appeal to Heaven" on it, we appeal to heaven.

We ask for Holy Spirit truth, help and guidance on decisions. Give us a spirit of wisdom and revelation. May eyes of understanding be enlightened to know and do what is right for the people of Nevada.

As Ben Franklin, at the First Constitutional Convention, which was in confusion and divisions, called for prayer resulting in the Constitution, we call on You Father to bring clarity and unity on laws.

As President Lincoln said, "May we have a new birth of freedom under God," guide these representatives to bring forth more liberty in important issues.

As the government in Jamestown would not start their meeting until the Reverend prayed, we thank You, Father, for the freedom here to start in prayer.

May the Lord bless and keep you and give you peace in the midst of storms. In the Name of the risen Jesus, I pray.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Commerce, Labor and Energy, to which were referred Senate Bills Nos. 68, 253, 374, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JAMES A. SETTELMEYER, *Chair*

Mr. President:

Your Committee on Education, to which were referred Senate Bills Nos. 391, 405, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BECKY HARRIS, *Chair*

Mr. President:

Your Committee on Health and Human Services, to which was referred Senate Bill No. 441, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOSEPH P. HARDY, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, April 14, 2015

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bills Nos. 57, 141, 194, 273.

Remarks by Senator Hardy.

Senate Bill No. 477 authorizes a governing body of any county or incorporated city to adopt a building code or take any other action that requires the installation of an automatic fire sprinkler system in a new residential dwelling unit that has an area of livable space of 5,000 square feet or more. On or after July 1, 2015, such a governing body may adopt a building code or take any other action that requires the installation of an automatic fire sprinkler system in a new residential dwelling unit that has an area of livable space of less than 5,000 square feet only if the governing body conducts an independent cost-benefit analysis of the proposed requirement to install an automatic fire sprinkler system and makes certain findings at a public hearing.

The bill does not prohibit: (1) a local government from enforcing an agreement for the development of land which requires the installation of an automatic fire sprinkler system in a residential dwelling unit; or (2) a person from installing an automatic fire sprinkler system in any residential dwelling unit. The bill further provides that such a governing body may require the installation of an automatic fire sprinkler system in such a residence without conducting the cost-benefit analysis and making the findings otherwise required if, with regard to any particular new residential dwelling unit, the governing body determines that the unique characteristics or location of the residence would cause a delay in firefighter response time.

Finally, the bill provides, with exceptions, for the continued enforcement of any building code, ordinance, regulation or rule relating to the installation of an automatic fire sprinkler system that was adopted by a governing body before January 1, 2015.

This measure is effective upon passage and approval.

Roll call on Senate Bill No. 477:

YEAS—13.

NAYS—Atkinson, Denis, Ford, Kihuen, Manendo, Smith, Spearman, Woodhouse—8.

Senate Bill No. 477 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Joint Resolution No. 17.

Resolution read third time.

Remarks by Senator Brower.

Senate Joint Resolution No. 17 proposes to amend the *Nevada Constitution* by eliminating existing victim's rights provisions found in Article 1, section 8, and replacing them with an expanded set of provisions in the form of a victim's bill of rights.

If approved in identical form during the 2017 Session of the Legislature, the proposal will be submitted to the voters for final approval or disapproval at the 2018 General Election.

Roll call on Senate Joint Resolution No. 17:

YEAS—15.

NAYS—Atkinson, Ford, Parks, Segerblom, Spearman, Woodhouse—6.

Senate Joint Resolution No. 17 having received a constitutional majority, Mr. President declared it passed, as amended.

Resolution ordered transmitted to the Assembly.

Assembly Bill No. 78.

Bill read third time.

The following amendment was proposed by Senator Gustavson:

Amendment No. 583.

SUMMARY—Makes various changes relating to wildlife. (BDR 45-362)

THE SEVENTY-FOURTH DAY

CARSON CITY (Thursday), April 16, 2015

Assembly called to order at 12:36 p.m.

Mr. Speaker presiding.

Roll called.

All present except Assemblywoman Woodbury, who was excused.

Prayer by the Chaplain, Rabbi Sanford D. Akselrad.

O source of light and truth. Watch over all people. Watch over our wisdom; watch over our empathy; and watch over our sense of right and wrong. You are the ultimate source of all truth, and we who are created in Thy image, form a sacred partnership and a holy trust to insure that we remain good and caring stewards over the world in which we live.

Help us to respect those of all faiths and embolden us to protect the rights of all who seek a more just and caring world.

Let none of us remain silent in the face of true evil. Nor shall we turn aside our hearts or avert our gaze when we see justice denied for any, for ours is a sacred responsibility.

Embolden all who gather here in service to our public with this knowledge, and may they fulfill this duty with fullness of heart and soul.

O source of light and truth, watch over us now and always.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Paul Anderson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Commerce and Labor, to which were referred Assembly Bills Nos. 89, 173, 182, 228, 295, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

RANDY KIRNER, *Chair*

Mr. Speaker:

Your Committee on Education, to which was referred Assembly Bill No. 107, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Education, to which was referred Assembly Bill No. 120, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

LYNN D. STEWART, *Vice Chair*

Mr. Speaker:

Your Committee on Government Affairs, to which were referred Assembly Bills Nos. 59, 363, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOHN C. ELLISON, *Chair*

Mr. Speaker:

Your Committee on Health and Human Services, to which was referred Assembly Bill No. 158, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JAMES OSCARSON, *Chair*

Mr. Speaker:

Your Committee on Judiciary, to which was referred Assembly Bill No. 140, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Judiciary, to which were referred Assembly Bills Nos. 224, 233, 238, 362, 379, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

IRA HANSEN, *Chair*

Mr. Speaker:

Your Committee on Legislative Operations and Elections, to which was referred Assembly Bill No. 462, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

LYNN D. STEWART, *Chair*

Mr. Speaker:

Your Committee on Taxation, to which was referred Assembly Bill No. 316, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Taxation, to which was referred Assembly Bill No. 372, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, without recommendation, and rerefer to the Committee on Ways and Means.

DEREK ARMSTRONG, *Chair*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, April 15, 2015

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Senate Bill No. 251.

Also, I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bills Nos. 13, 48, 75, 94, 104, 138, 142, 167, 174, 183, 194, 195, 197, 229, 246, 264, 313, 320, 327, 354, 390, 395, 404, 440, 442, 444, 445, 446, 464, 477; Senate Joint Resolution No. 17.

SHERRY RODRIGUEZ

Assistant Secretary of the Senate

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Paul Anderson moved that Assembly Joint Resolution No. 1 be placed at the top of the General File.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Joint Resolution No. 1.

Resolution read third time.

Remarks by Assemblyman Ellison.

Assemblyman Paul Anderson moved that Assembly Bills Nos. 51, 297, and 420 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried

Assemblyman Paul Anderson moved that Assembly Bill No. 413 be taken from the Second Reading File and placed on the Chief Clerk's desk.

Motion carried

Senate Joint Resolution No. 17.

Assemblyman Paul Anderson moved that the resolution be referred to the Committee on Legislative Operations and Elections.

Motion carried.

NOTICE OF EXEMPTION

April 16, 2015

The Fiscal Analysis Division, pursuant to Joint Standing Rule 14.6, has determined the eligibility for exemption of: Assembly Bills Nos. 221 and 395.

CINDY JONES

Fiscal Analysis Division

INTRODUCTION, FIRST READING AND REFERENCE

Senate Bill No. 13.

Assemblyman Paul Anderson moved that the bill be referred to the Committee on Education.

Motion carried.

Senate Bill No. 48.

Assemblyman Paul Anderson moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

Senate Bill No. 75.

Assemblyman Paul Anderson moved that the bill be referred to the Committee on Education.

Motion carried.

Senate Bill No. 94.

Assemblyman Paul Anderson moved that the bill be referred to the Committee on Taxation.

Motion carried.

Senate Bill No. 104.

Assemblyman Paul Anderson moved that the bill be referred to the Committee on Legislative Operations and Elections.

Motion carried.

Senate Bill No. 138.

Assemblyman Paul Anderson moved that the bill be referred to the Committee on Judiciary.

Motion carried.

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
May 6, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:19 p.m. on Wednesday, May 6, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

GUEST LEGISLATORS PRESENT:

Assemblywoman Irene Bustamante Adams, Assembly District No. 42

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Chandni Patel, Intern to Assemblywoman Irene Bustamante Adams
Connie Westadt, Committee Secretary

OTHERS PRESENT:

Benjamin Lublin
Lise-Lotte Lublin
Daniele Dreitzer, Executive Director, The Rape Crisis Center, Las Vegas
Kristy Oriol, Nevada Network Against Domestic Violence
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General

Mr. Bosler:

In my opinion, if the JP did that based on the quality of the hearsay or the level of the hearsay, a writ would be filed challenging the dismissal and the JP would be reversed. The statute does not place any limitation on what type of hearsay is admissible. I do not think this is a step to be taken lightly. I share Mr. Kohn's view that this is something we should do in a more robust environment.

I read one of the letters from the judges. The judge expressed a concern that sometimes as a result of the testimony of the complaining witness presented at the preliminary hearing, the charge is changed from sexual assault to lewdness or from one count of lewdness to three counts of lewdness. Assembly Bill 193 deprives the magistrate and the complaining witness of that opportunity. It may inure to the detriment of the defendant, but we use the magistrate in the preliminary hearing to screen cases and make sure the right charges and the right cases make it to district court. This bill does not accomplish that.

Steve Yeager (Office of the Public Defender, Clark County):

I have provided a letter from the Clark County Public Defender's Office (Exhibit E). I also provided a presentation (Exhibit F). Admittedly, this presentation was prepared for the Assembly. Not all of it is applicable. The import of it is a review of the 36 states that admit hearsay. There is conclusory language about the fact that less than half of those states have no safeguards. The preliminary hearing is a pressure point in the case. Most cases are negotiated before the preliminary hearing. Sometimes we have to get to the preliminary hearing and we—the defense attorney and the district attorney—have to see the evidence. One of us might be mistaken about the strength of our case. Sometimes my client needs to see the evidence up close before the negotiation happens. Often for defense attorneys, the preliminary hearing is the only opportunity to see a victim or see a witness testify.

If the victims' bill of rights—Joint Resolution (S.J.R.) 17—is approved, the preliminary hearing may be the only chance defense counsel has to see and talk to a victim. Under S.J.R. 17, the victim would not have to talk to us. The preliminary hearing is a vetting that often results in negotiation, which happens in 99.6 percent of cases. As a policy matter, if we know these cases are going to negotiate, do we want that to happen earlier in the process or later? Having the victim at the preliminary hearing helps negotiations. One, more cases will go to district court. It is not a huge number, but there will be some. Two, more cases will go to jury trial that would otherwise negotiate. It is a whole different

animal to testify in front of a jury. Most victims will testify one time at the preliminary hearing. That is a better place for that to happen than at a trial.

Senate Joint Resolution No. 17 (1st Reprint): Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Senator Ford:

Exhibit F on page 18 says that 18 of the 36 states would not allow what the district attorneys seek here. Page 19 says that nine of the cited states only admit hearsay with significant restrictions. What are those restrictions?

Mr. Yeager:

In California, the hearsay must come through a qualified law enforcement office. That is someone with 5 years of experience. In Colorado, the judge has to approve the hearsay before it comes in. In Oregon, the magistrate has to be shown that it would be an unreasonable hardship to bring the witness in. We highlighted those three states. I have more information that I could provide to you. It is not an open-up-the-gates scenario. It is tempering in some of the other states. *Nevada Revised Statute* 51.385 applies at trial; but Clark County uses it at preliminary hearings quite often. The JPs will allow child hearsay at preliminary hearings with those procedural safeguards. It is not codified but used by practice. It is not used at grand jury proceedings.

Senator Ford:

Why can we not put the strictures of NRS 51.385 into A.B. 193?

Mr. Yeager:

Those requirements could be put into A.B. 193. If A.B. 193 passes as written, what impact would that have on NRS 51.385 and its use in Clark County by practice in preliminary hearings? The result would probably be that NRS 51.385 would only be used at trial and would not be used at preliminary hearings.

Sean B. Sullivan (Office of the Public Defender, Washoe County):

I have provided written testimony (Exhibit G). We all agree that the JP is the final arbiter of a witness's credibility or demeanor at the preliminary hearing. Assembly Bill 193 will make it difficult for the JP to determine the credibility or veracity of a witness if the witness is not at the preliminary hearing. The lead detective or the lead officer may be there, both of whom have the color of

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Eighth Session
May 12, 2015**

The Committee on Legislative Operations and Elections was called to order by Chair Lynn D. Stewart at 4:02 p.m. on Tuesday, May 12, 2015, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, 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/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Lynn D. Stewart, Chair
Assemblywoman Shelly M. Shelton, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Michele Fiore
Assemblyman John Moore
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Michael Roberson, Senate District No. 20
Assemblyman Jim Wheeler, Assembly District No. 39

Minutes ID: 1078



the equation. I know comprehensive immigration reform means border security, it means more enforcement, and it also means keeping families together. For those reasons, I will be voting yes.

Chair Stewart:

We will now vote on S.J.R. 21 (R1).

THE MOTION PASSED. (ASSEMBLYMEN MOORE AND SHELTON
VOTED NO.)

I will assign the floor statement to Assemblyman Thompson.

Assemblyman Trowbridge:

I do not want to leave any erroneous impressions in regard to Senate Joint Resolution 1 (1st Reprint). I should have mentioned it at the time of the vote, but I reserve my right to vote my conscience when it comes to the floor.

Chair Stewart:

I will now close the work session and open the hearing on Senate Joint Resolution 17 (1st Reprint).

Senate Joint Resolution 17 (1st Reprint): Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Senator Michael Roberson, Senate District No. 20:

I am here to present Senate Joint Resolution 17 (1st Reprint), Marsy's Law. I am proud to offer this bill to improve the language in the *Nevada Constitution* in a way that guarantees crime victims the same standing as the accused and convicted.

The rights outlined in this bill, commonly referred to as Marsy's Law, are becoming the model across the country as lawmakers seek to level the playing field by guaranteeing victims the voice that they have often been denied. Marsy's Law is named after Marsy Nicholas. Marsy was a senior at the University of California, Santa Barbara, when an ex-boyfriend murdered her. On the way home from her funeral, Marsy's mother and brother stopped by a market for groceries where they were shocked to see the man who had murdered Marsy. The family had not been notified that he had made bail. Eventually, he was convicted and died in prison.

The Nicholas family has been fighting ever since to guarantee stronger protections for other victims. Similar language to what is presented in this bill was recently added to the *Illinois Constitution*. The legislation enjoyed bipartisan support and was overwhelmingly passed in November by a vote of the people with more than 78 percent of the popular vote.

In Nevada, we have tireless victim advocates committed to doing all they can. We have law enforcement agencies that go above and beyond to help. We have district attorneys and first responders across the state willing to invest time and resources to provide as much assistance as they can. What we do not have is enough clarity in our *Constitution* to guarantee crime victims the rights and protections they deserve.

This bill has strong bipartisan support from members of this Committee. It also has the support of victim advocates, law enforcement, district attorneys, and others. I understand a number of those individuals and groups are here to testify today. We are also fortunate to have one of the country's true victim rights experts, Meg Garvin, Executive Director of the National Crime Victim Law Institute, who is here to testify on behalf of this bill. Ms. Garvin is prepared to testify on the provisions of the measure as well as three friendly amendments that have been offered to put Nevada's crime victims' bill of rights on par with others across the country.

I am proud to introduce this bill and proud that this bill enjoys strong bipartisan support. Victims of crime and their families have been through so much, and the most important thing we can do for them right now is to guarantee them standing, notification, and a voice in the process. I strongly recommend passage of this bill.

Meg Garvin, Executive Director, National Crime Victim Law Institute:

I am pleased to be here to testify in support of the proposed resolution. I am the Executive Director of the National Crime Victim Law Institute, and I am a clinical professor of law at Lewis & Clark Law School in Portland, Oregon. My work in those two roles has taken me to almost every state in this country to work either on cases through litigation or on legislation. I have also worked on federal legislation to afford victims' rights. Victims' rights are a nonpartisan issue, not simply a bipartisan issue. It is true because no matter what lens one uses when looking at the criminal justice system, it is clear from the literature and research that the system functions best when the victims are integrated into it, and that integration is only achieved when victims are afforded enforceable constitutional rights.

I want to share a few points and will then walk you through the provisions. The first issue is why enforceable victims' rights and why constitutional rights? Research is very clear that while participation in the criminal justice system can be beneficial for some victims, for many victims it results in additional victimization beyond the original crime. This is known in the literature as secondary victimization. What the literature and social science and psychological studies are showing is that whether or not one incurs additional trauma impacts from the criminal justice system is attributable at least in part to whether victims have rights and whether those rights are enforceable. This has been recognized for quite a while, including back in the early 1980s, when President Ronald Reagan started to analyze the criminal justice system and put together a task force. That task force made recommendations to change the criminal justice system. In many states those changes have been implemented. In more than 30 states, including Nevada, constitutional amendments were put in place from the early 1980s through the early 1990s. Since that time, however, what we have found out of this movement is that the initial rights afforded to victims were deficient. In fact, many of the rights, because they were either less than clear or lacked enforceability, have actually contributed to revictimization of victims in this country.

We can amend this and fix it by adopting the constitutional provision in front of you. Nevada can certainly move to the fore of protecting victims' rights. One of the questions before you may be why this should involve a constitutional right as opposed to a statutory fix. I would love to say that I am the most brilliant mind on constitutional rights versus statutory rights, but I rely on Harvard Law School Professor Laurence H. Tribe, who is perhaps the premier constitutional law scholar in the country. When speaking about whether victims' rights should be embedded in statute or constitution, Professor Tribe said that "there is a tendency to ignore or underenforce such rights whenever they appear to rub up against either the rights of the criminally accused or the needs or wishes of the prosecution." Professor Tribe articulated well what those of us in the field know, which is that constitutional rights are required to ensure the victims' place in the criminal justice system.

The second point is perhaps the largest elephant in the room whenever speaking about victims' rights and that is, what about defendants' rights? Do victims' rights eviscerate defendants' rights? Many practitioners, jurists, and legislators across the country have posed this question fearing that if you expand or clarify victims' rights, defendants' rights will necessarily be diminished. I am a proponent of individual rights for defendants and victims, having worked on defense cases in the past. Again, perhaps I am not the best voice to allay these fears, as I am here as a victims' advocate, but Human Rights Watch, one of the most well-respected, nongovernmental organizations in this country that seeks

to protect all persons' rights, noted in a recent report on crime victims' rights in America, "While there can be tensions between the legitimate interests of victims and defendants, a criminal justice system based on human rights standards can safeguard the rights of both while advancing justice and the rule of law."

The fear of erosion of defendant's rights is a mischaracterization of the criminal justice system as a zero-sum game. Courts in this country routinely look at complex situations where multiple persons have interests at stake. In fact, during the time I have been testifying, I would guess a court in Nevada has had to figure out whose rights take priority at the moment. With that, I believe the constitutional amendment before you would make the justice system in Nevada more just, more equal, and more fair for everyone impacted by crime. With the Chairman's permission, I will walk through some of the language.

The bill begins with the resolution that a new section, section 23, be added to Article 1 of the *Nevada Constitution*. Section 23, subsection 1, paragraph (a), is the right to be treated with fairness and respect. This is really the foundational paragraph for the provisions. It establishes foundational rights that are necessary to avoid revictimization in criminal or juvenile justice systems. As we know, victims have to navigate one or both of those at times, and these rights to be treated with fairness and respect are simply foundational to ensure we do not revictimize victims as they go through the process.

Section 23, subsection 1, paragraph (b): "To be reasonably protected from the defendant and persons acting on behalf of the defendant." What we know from the literature is the victims will simply not access the justice system if they are afraid for their own safety. They will not report the crime, and if they do report the crime but continue to fear for their safety, they will not continue with the process, and the system will become dysfunctional. This paragraph ensures that victims have protection. Notably, it is cabined, or restrained, by the term reasonably, meaning that this right will certainly not derail the entire criminal justice system by being overly broad. It simply ensures that victims can and will feel safe as they access justice.

Section 23, subsection 1, paragraph (c): "To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant." This is certainly related to paragraph (b), but what we know is that historically, when it comes to bail and release assessments, the focus has been far narrower than this on simply whether a defendant will appear at a subsequent proceeding and whether there is a generalized risk of harm to the community. This provision ensures specific court consideration of victims.

Section 23, subsection 1, paragraph (d): "To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family." Again, this is utterly critical to ensure that victims feel safe when accessing justice.

Section 23, subsection 1, paragraph (e): "To refuse an interview or deposition request, unless under court order or subpoena, and to set reasonable conditions on the conduct of any such interview to which the victim consents." This is one of the friendly amendments that has been introduced (Exhibit J). The amendment is the deletion of the words "or subpoena." The language that is left is "under court order" and is adequately protective of folks in the system. There was agreement in reaching this language.

Section 23, subsection 1, paragraph (f): "To reasonably confer with the prosecuting agency, upon request, regarding the case." This ensures that victims know what is happening in the case, and that the people who are most in the know, the prosecuting attorney and his or her office, afford victims the opportunity to know what is happening with regard to the prosecution of the person that they believe committed the crime. While good prosecutors may already be doing this—and I know there are prosecutors in Nevada who are already doing this—the provision ensures that all prosecutors take the time to pause and do it.

Section 23, subsection 1, paragraph (g): "To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings." This is the right for victims to witness justice in action. It allows them to know when things are happening and to be present if they choose to witness justice happening. It is a very critical right to victims as they move toward surviving.

Section 23, subsection 1, paragraph (h), is part of the friendly amendment (Exhibit J). The proposed language is "To be reasonably heard, upon request, at any public proceeding, including any delinquency proceedings, in the district court involving release, sentencing, or any parole proceeding." This goes to the core of why Marsy's Law exists in any place in this country, which is the victim's voice matters. The person most recognized as harmed by crime is the individual victim. Ensuring that they have a time and place for their voice to be heard before a release decision is made, before sentence is finalized, and before parole decisions are finalized is utterly critical. The right notably is constrained by the term reasonable, which ensures that courts in this state will

be able to enforce reasonable constraints on courtroom decorum, control for prejudicial statements that are made, or could be made, and allow them to adequately manage their courtrooms. The right is critical for victims but also utterly manageable for courts in this state.

Section 23, subsection 1, paragraph (i): "To the timely disposition of the case following the arrest of the defendant." Victims across the country, including Nevada, sometimes wait not just days or months but years to have justice, often pausing their lives while the system is grinding through. Justice simply should not be delayed without good cause. This provision ensures that it moves forward, but as we have seen in states across the country with provisions similar to this, it does not infringe on the defendant because the defendant must constitutionally, under federal law, have time to prepare for trial.

Section 23, subsection 1, paragraph (j): "To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant." This ensures that the presentence author knows the full and true story of the victimization and the impact it has had on the victim. This is utterly critical to crafting a presentence investigation report that gives the court enough information to impose a just and fair sentence.

Section 23, subsection 1, paragraph (k): "To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody." This is about ensuring that victims are not left in the dark. The crime happened to them, and knowing what happens to their perpetrator is critical to moving toward surviving.

Section 23, subsection 1, paragraph (l): "To full and timely restitution." Fundamentally, this is about who should bear the financial burden of crime. Should it be the victim, or should it be a convicted offender? This says it should be a convicted offender, and the victims should not have to finance their own victimization.

Section 23, subsection 1, paragraph (m): "To the prompt return of legal property when no longer needed as evidence." There simply is no reason not to return the property after a certain point in a case when it is no longer needed. Sadly, it too often falls through the cracks, and victims have to jump through hoops to get back the most basic items that are necessary to them moving forward. This provision guides law enforcement and others to ensure that items are returned.

Section 23, subsection 1, paragraph (n): "To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender." Knowing the status and providing information to decision makers at every point during the criminal justice process is absolutely critical. This provision ensures that decision makers hear from victims.

Section 23, subsection 1, paragraph (o): "To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made." Again, this ensures that decision makers hear from those most impacted.

Section 23, subsection 1, paragraph (p): "To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim." This is related to the restitution provision and ensures that victims do not have to finance their own victimization.

Section 23, subsection 1, paragraph (q): "To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public." This is foundational. The first step in activating one's rights is knowing that they exist. If you do not know they exist, you cannot do it. We know this from Miranda rights, we know it from defendant's rights beyond Miranda, and we know it from every rights movement that has ever happened in this country. Those are the delineated rights.

Going on to section 23, subsection 2: "A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case." This provision is absolutely critical and fills the gap that has existed in victims' rights across the country for a long time. It ensures that the victims are not parties of the proceedings but they have independent legal standing to ask the court for their rights. This is what separates meaningless rights from meaningful rights. Dating back to *Marbury v. Madison*, 5 U.S. 137 (1803), one of the first U.S. Supreme Court cases, we know that for every right there has to be a remedy, and that the person to whom the right attaches has to have standing to ask for the right. This provision makes clear that Nevada victims have standing to ask for their rights.

Section 23, subsection 3: "Except as otherwise provided in subsection 4...." This constrains the remedies available under this proposed measure. It preserves double jeopardy so you cannot undo a trial but it allows certain remedies.

Section 23, subsection 4: "A person may maintain an action to compel a public officer or employee to carry out any duty...." Again, as *Marbury* said, if you have a right, you have to have a remedy. This provision constrains what remedies are available. It sets forth what device a victim should go to the court with. This language is already in your *Constitution* under the current victims' rights provisions and has not been changed.

Section 23, subsection 5 states that the rights "must not be construed to deny or disparage" any rights already existing. It would be utterly preposterous to propose a victims' rights amendment to your *Constitution* which then disparaged or took away rights that are already in existence.

Section 23, subsection 6: "The Legislature shall by law provide any other measure necessary or useful." That leaves you to do additional work down the road as things emerge.

Section 23, subsection 7 defines "victim."

Section 23, subsection 8 is part of the friendly amendment (Exhibit J), which is to remove this subsection. As it currently reads, it hierarchicalizes rights in your *Constitution*, which is a very strange provision to say the least, when thinking about constitutional rights. The history in this country, and the practice across the country, is that constitutional rights do not get hierarchicalized within it. If they are constitutional rights, we leave it to the courts on a daily basis to figure out how to navigate if rights actually conflict. Again, Laurence Tribe, the constitutional scholar, simply noted that these types of provisions are unnecessary.

Assemblyman Elliot T. Anderson:

Since it is a constitutional amendment that could be litigated and interpreted, I want to ensure we have a very clear and clean record on this. I want to talk about that last provision of section 23, subsection 8, the hierarchy of rights as you call it. I do not know if that is making it a hierarchy. If this were not interpreted that way, would it not be unconstitutional? For example, if you have a confrontation right under the Sixth Amendment, if it infringes on that right and gets in the way, then it is unconstitutional. So how could a federal court not interpret it that way?

Meg Garvin:

I apologize for being less than clear in my initial statement. There is simply no way that a state constitutional amendment can trump a federal constitutional right. That is well established in case law, which is making this language superfluous. No court would, or could, interpret with any legitimacy a state constitution provision to trump a federal constitution provision. In other victims' rights litigation and legislation across the country it has been articulated, but it is really superfluous language in a state constitution. The hierarchicalizing I was referencing was hierarchicalizing the Nevada constitutional rights rather than just leaving it as victims have constitutional rights and defendants have constitutional rights under Nevada law.

Assemblyman Elliot T. Anderson:

We are not putting the victim in jail. When you use state power against an individual, those protections are in there because of well-worn experiences where innocent people were railroaded in the past by the founding fathers. Many of these rights were put in for having well-worn experience. Would we really want to say that we are going to ignore that history? For example, what about the issue with not having to testify unless ordered? Right now, the prosecution has the power to do a material witness warrant to say you have to come in to testify. The way I read this bill, that could make that provision unconstitutional. In fact, would that not be letting the defendant off because if you cannot make your case, if you cannot have the victim testify, I think that will have the opposite effect of what you are looking for. In the spirit of this, we are saying we want to stop the victim from being revictimized, but if the prosecutors cannot make their case and they cannot bring the witness in to testify, then the defendant is let off and free to victimize again.

Meg Garvin:

No, I do not believe it could happen with this proposal. This would not touch the powers of the prosecution or alter the traditional criminal justice system with regard to when to bring charges, what charges to bring, or how to compel witnesses. These are relatively discreet rights in the process. For instance, material witness warrants, in every jurisdiction that has victims' rights, are still enforceable, and victims are still being compelled and being incarcerated prior to testimony. I do not support that in any way, shape, or form, except to ensure just systems.

With regard to history, here is an interesting footnote for everyone on the Committee. When this country was founded, including through the drafting, adoption, and ratification of the *U.S. Constitution* and into the early 1900s, victims were in fact the prosecutor, and these rights were afforded in large part because the office of the public prosecutor was not in existence.

Victims' rights were not constitutionalized in the original *U.S. Constitution*, because to say in the *U.S. Constitution* that you have to notify victims in order for them to be present would have been nonsensical because they were present. The original structure of our criminal justice system actually had victims and perpetrators and accused all in the room at the same time, all with rights to be notified, present, heard, and protected. We certainly moved away from that, and this is not advocating for victims to take over prosecution again, but it is an important point historically.

Finally, we honor and respect the job of the courts who literally, on a daily basis, are looking at multiple rights that are at issue and saying, which one in this moment takes priority? A good example is we all know that the media and the public have rights in the criminal justice process. Those are of a federal constitutional magnitude. Courts have to always consider when the media makes a request to open the courtroom, to have cameras in the courtroom, and the defendant's fair trial rights are at stake. The court looks at both of those and says, how do I analyze this? I do not strip anyone of their rights, but I might say to the media person, you are not going to get a camera in this courtroom because that would infringe on the defendant's fair trial rights. The court may say, you can have a sketch artist in the courtroom because that is a balance of the rights. So it is utterly possible to do it, and courts do it routinely.

Assemblyman Thompson:

In section 23, subsection 1, paragraph (d), because of social media, I feel there should be something that states that the victim and the victim's family has to do some things on their end as well to ensure that they are not locatable. We know Facebook is an easy way to find out where a person is. I would like to see some wordsmithing to create that balance of what the defendant cannot have access to and what the victim and family has to do to ensure their privacy.

Meg Garvin:

I believe the word confidential helps to achieve that. For instance, Facebook would not be deemed, by law, to be confidential. The confidential information helps to ensure the protection and balance that you were just articulating.

Assemblywoman Fiore:

I am under the impression that the actual Marsy's Law organization is opposed to this language, and I am wondering how it found its way into the bill? I am speaking about section 23, subsection 8.

Meg Garvin:

For clarity's sake, I am not a Marsy's Law employee. I know when I testified in the Senate, that portion was not there. It was put in after I testified.

Assemblywoman Fiore:

Just to be clear, we are looking at a Marsy's Law resolution that the Marsy's Law organization is opposed to. Do you think you might want to contact them again and revisit that?

Meg Garvin:

Once these friendly amendments are put in, it is Marsy's Law again. With the three friendly amendments (Exhibit J), it is returned to the original Marsy's Law.

Assemblywoman Fiore:

I have an email from that organization saying they are opposed to the language. I am asking how it found its way here, and maybe you can contact them.

Meg Garvin:

I believe there may be some folks here who can testify to that.

Jon Fleischman, Marsy's Law For All:

We absolutely support this legislation. We want it to move forward. We are in full support of Senator Roberson's original document and with the friendly amendment. Prior to the amendment, further discussions took place because, as you know, the legislative process is filled with give and take. The conclusion that we have come to is this resolution before you today, with the friendly amendment. This is a bill that we would absolutely love to see passed, and we are prepared to bring it to the voters and fund the campaign to ensure it is passed and put into the *Constitution*.

Jennifer Bishop-Jenkins, Director, Marsy's Law for Illinois:

I am a murder victim's family member, and I am very honored to address this Committee. Twenty-five years ago, my sister, her husband, and their baby were murdered. I hope no one in this room has had an experience even close to that, but it is the most staggering and horrific thing to be a victim of a violent crime. I have also been working with rape victims, domestic violence victims, and victims of child abuse. To be a victim of a violent crime is utterly life changing and completely staggering. It really does become the most important thing in your life.

In our case, we went through an exhaustive investigation. At first we did not know who did it. Then they caught the guy and we went through a long trial process, very agonizing, in which he tried to blame someone else.

He was convicted, and he was definitely guilty. He received three life without parole sentences, which is mandatory under Illinois law at the time because he committed a multiple murder. After two years of going through the agony of this, we got our conviction and were able to make our victim impact statements. Finally, he would hear from us. We would have our voices be heard, our story on the record, and the story of my sister Nancy, her husband, and baby included in the official record of the case. We were very much looking forward to making victim impact statements; however, we received a call from the court saying that because the sentences were mandatory and they were in too much of a hurry, they were not going to bother taking the victim impact statements and for us not to come. At the time, we were trying to be cooperative with the whole proceedings; we wanted the conviction and we wanted the defendant sentenced. In hindsight, I can tell you that was a great disappointment and to this day still nags at all of us family members. It is agonizing to go through a violent crime and then have the very criminal justice system that you count on, to protect you and bring justice to the case, turn around and revictimize you. That is how our family experienced that as a revictimization—that we were marginalized, that our voice was not included in the case in any way. The whole trial and everything surrounding it was all about the offender.

Here are some of the things that victims' families go through in terms of revictimization: stress, inability to sleep, anxiety, depression, loss of ability to focus at work, or to work at all. Sometimes victims may turn to alcohol or have an inability to concentrate, health problems, financial problems, or relationship problems, all over the stress of the trauma of the violent crime and the subsequent difficulties in the criminal justice system. These can go on for years after the original violent crime occurs.

Most victims never expect to be a victim of violent crime. This is the most universal demographic you will probably ever vote on in a constitutional amendment because anyone could be a victim of a violent crime, at any time, and nobody ever expects to be. Many victims are stunned to find out they even have rights, or that there is a question of their rights, or that there is no standing for them in their case, or that they do not even have the ability to let the court know of their schedule, or if the court sets a hearing and the victim is not given advance notice about it. There are many issues that victims struggle with during the course of the process. I have conversations with victims all the time about how difficult and frustrating it is for them.

I am so proud to be a part of the movement to get enforceable victims' rights. Here in Nevada, this is such a proud moment for your state to do this for people who are the most vulnerable in their life, who are hurting the most. When we

worked on this in Illinois, and got Marsy's Law passed this last year, I can tell you that almost 80 percent of the voters in every single demographic, every party, every geographic region, gender, race, and class, supported this. Victims know no class. Victims are going to be people of every persuasion. They are hurt by the crime, and the criminal justice system should not exclude them. They should have rights to participate in their own case. I am very grateful to you all for considering this incredibly important measure. On behalf of victims of violent crime who are often too retraumatized to speak out, I am grateful for anyone who would support this measure.

Chair Stewart:

Thank you for speaking out. I hope this is a sense of relief being able to testify in both Illinois and here.

Assemblyman Ohrenschall:

What are your feelings as to why the current language regarding protecting victims in Article 1, Section 8 of the *Nevada Constitution* is inadequate and why the proposed new language is better. I also have a question on section 23, subsection 1, paragraph (i), regarding the timely disposition of the case following the arrest of the defendant. I wonder what the experience has been in other states that have that language in their constitution. If a continuance is needed on the defense side to retest something, or further investigate, I am concerned that our judiciary reading this may be less likely to grant such a continuance. Even though we need to absolutely have swift justice for offenders, all one needs to do is look at the Innocence Project's website and see how many convictions have been overturned. We know that rushing to judgment can lead to false convictions.

Meg Garvin:

To the speedy disposition point, you are absolutely in line with victims' rights folks across the country that no one wants to rush to judgment. When you have a conviction that has to be overturned, you now have two victims. You have the original victim of the original crime, and then you have the person who was falsely accused and convicted. No one wants that to happen. This language as it has been applied elsewhere has been balanced, meaning courts have done a reasonable analysis of whether the defendant and/or the state needs a continuance, and if so, how long? Generally speaking, the courts will need to determine how long that continuance should be. Does it give them six months, or do they have a check-in hearing in 30 days? What this does is ensure that progress continues. It does not, nor has it ever in any jurisdiction, resulted in a trial the next day or the next week.

Assemblyman Ohrenschall:

Is there any data in terms of jurisdictions that have adopted an amendment like this as to how many convictions have been sustained versus overturned? Also, there is the horrible story we heard about victims not being allowed to speak by the judge in an effort to speed things up. Is there data that this is happening less in jurisdictions that have adopted this? That is very concerning. I have not seen it happen in Nevada, and obviously that should not happen.

Meg Garvin:

In terms of data, the articulation that you have before you, Marsy's Law is relatively new; 2008 was the first adoption of Marsy's Law in California, and Illinois has followed suit. With that said, a handful of states have similar provisions, Arizona being the one of longest standing. I am unaware of specific data in response to your question, but I can certainly see if there is some and submit it.

Chair Stewart:

Is there anyone here in support of S.J.R. 17 (R1)?

Kristy Oriol, Policy Specialist, Nevada Network Against Domestic Violence:

We represent all the statewide organizations serving domestic violence victims in Nevada. I want to begin by expressing our support for the stated amendment. I think the proponents, by deleting section 23, subsection 8, has made this a victim-centered bill. As you have already heard, navigating the legal system for victims is, to say the least, a very overwhelming and confusing process. If a victim does decide to engage the legal system after their abuse, the process is very confusing. We have wonderful victim advocates in Nevada, but many victims do not even reach the point where they are willing to prosecute because of their fear and their lack of understanding of the legal process. Victims who report the abuse commonly end up changing their minds or recanting statements and are very confused when they find out the prosecution can move forward without their consent. We feel this is an avoidable reality in prosecuting domestic violence crimes, but we can and we should do more for victims to give them a voice during that time of prosecution. I feel that by expanding these constitutional protections, perhaps more victims will feel comfortable prosecuting their abusers.

In addition to the benefits that S.J.R. 17 (R1) offers victims, it also guarantees these constitutional protections for families. Nevada has the sixth highest homicide rate in the United States for women killed by men. We have ranged in the top ten for the past decade. This is a horrifying statistic. People in Nevada already have to face the loss of a daughter, a mother, or a sister at the hands of an intimate partner. Allowing them to have some constitutional protections

would help in the healing process. We are very grateful to Senator Roberson for bringing this resolution forward, and I urge your support. [Also provided written testimony (Exhibit K).]

Assemblyman Ohrenschall:

From what I know about our existing statutory language, it seems that we have some robust statutes in terms of trying to ensure victims have a voice in courts and that they are notified. I think we even have a statute for sex offenders that grandparents of a victim are notified when the offender comes up for parole. We have many statutes already in place. Do you have specific examples in Nevada where our statutes have fallen short, where a victim has not been allowed to be heard in court, to be heard during sentencing, or to be notified about a possible parole hearing? Are there examples where our statutory framework is failing and we do need a constitutional change?

Kristy Oriol:

I cannot disclose specific details on cases I have worked on due to confidentiality, but I can tell you that, yes, we have seen this in many cases. Things as simple as victims getting their clothing back after a sexual assault examination are small details that are not currently protected in our constitutional system, but victims do need those items back. Things as simple as that can be pivotal to the healing process. I have heard from many victims that they do not feel knowledgeable about the prosecution, they do not feel they are included in the process, and I do feel this would provide those additional protections.

Assemblyman Elliot T. Anderson:

Maybe we cannot talk about specific details of specific cases, but the Clark County District Attorney's Office has a huge victims advocate office. Have there been problems at that office? I think judges can follow statutes. I think the district attorney's offices can follow statutes. The problem I am seeing is that to change the *Constitution*, it takes four years and a ballot campaign to fix. We do not know how this will be interpreted in the future, which takes away our flexibility as a legislator to respond. I need something specific on how the current system has failed the victims.

Kristy Oriol:

I agree, the victim advocates offices in both Clark County and Washoe County are doing a superb job. That would be assuming the victim even gets to that point of the prosecution. I think without these constitutional rights, a victim may not feel that support. I would be happy to look for some publicly available examples that I can share with you. What you also need to remember is that victims going through the district attorney's office do not have the confidentiality

protections because they are system advocates. Our programs in Nevada are providing wonderful services, but I strongly feel that we need to expand the constitutional protections.

Carolyn Muscari, Advocate Supervisor, S.A.F.E. House:

I am a domestic violence victims' advocate supervisor at Stop Abuse in the Family Environment (S.A.F.E. House). I have been working with victims for the past 17 years. Perhaps the biggest problem I see for victims is that they feel disrespected and left out of the process. I have had cases where the district attorney's office asked me to work with the client because she had refused to come to court. I was confused because they have their own advocates. I called the victim, and the reason she would not come to court was because the district attorney's office would not answer her questions. She did not feel safe; she wanted to know if they had received the 911 tape. All she was being told was, do not worry about it, we will take care of it. She was not going to go to court because she figured, if he walks, I am dead. I was able to get the answers she was looking for and provide the safety she wanted; she did testify, and he was convicted.

I have had other clients who stated they felt left out of the process. They did not even know when a deal was being made. I have had clients show up at court only to find out that an agreement had been made five days prior. The defendant knew about it, but the victim did not. I think what the victims feel is a disrespect at being left out of the process. I think passing this bill will aid the district attorneys and the courts. They will be able to get better convictions with more cooperative witnesses. I have had cases that have dragged on for three to five years, and the victims get tired of it controlling their lives. We have to include the victims in this. They have a right to be heard, to have their say, and to understand what is going on.

Assemblyman Thompson:

Based on your testimony, do you feel this is more of a systems issue versus a constitutional fix?

Carolyn Muscari:

I think it is probably both. I think we need the constitutional fix in order for the system to work better. If we do not have the guidelines, there is nothing to follow.

Assemblyman Ohrenschall:

How much of a problem might be remedied by this language versus the manpower, the funding, and the victims' advocates that we need in place in all of our prosecutor's offices but we cannot afford to hire? I am wondering if perhaps we need a dollars remedy rather than new language in the *Constitution*.

Carolyn Muscari:

There could be a partial systems problem. Obviously, money is an issue, but the issue in many of the cases I have seen is just a refusal to cooperate and answer the questions. I have had clients come to court four and five times and finally say, I am not going to go anymore; I am going to lose my job. I think much of this has to do with the focus on the prosecution, which is great, but the victims are being left out.

John T. Jones, Jr., representing Nevada District Attorneys Association:

We are here in support of this resolution and would like to thank Senator Roberson and the other proponents of the resolution for working with us on some of our concerns. As you have heard, it is extremely difficult for victims to go through the system. We try to balance the rights of the victims with our job to do justice. Unfortunately, sometimes they do collide. This resolution elevates the rights of the victims from statutory rights to constitutional rights.

Assemblywoman Fiore:

Why would we not put this in statute instead of the *Constitution*?

John Jones:

When you talk to the proponents of the bill, they want to elevate the rights of victims to constitutional rights, and I think that is a pretty compelling argument.

Stan Olsen, representing Nevada Association of Public Safety Officers:

We stand in support of this bill. I have over 36 years in law enforcement and have been coming here, working on different crime bills, for more than two decades. The vast majority of them are for criminal rights. Rarely do we have a bill that worries about the victim's rights. I think this resolution is good and right to do. Many times the only person who can speak for the victim is the criminal justice system. This is an example where Marsy is speaking for the victims.

Kasey La Foon, Sexual Assault Program Coordinator, Safe Embrace, Sparks, Nevada:

Safe Embrace is a local domestic violence intervention and sexual assault prevention program in Sparks. I am here in support of S.J.R. 17 (R1). It will

basically parallel the victims' rights already afforded to the accused and convicted criminals. Our job as victim advocates is to empower victims, and giving them additional constitutional rights is going to give them the power that the accused took away from them when he committed that crime against them. It will also give surviving family members a voice in the criminal justice system and, more importantly, equal rights and constitutional protections that they deserve.

Our present law provides criminals more rights than victims. I currently give one sheet of paper with 11 rights on it to victims of domestic violence or any type of power-based personal violence type crime. Criminals get the entire *Constitution*. This is very important to victims to be able to empower them. I have been an advocate for 3 1/2 years, and I often find myself telling my frustrated victims that it is a criminal justice system, not a victim justice system. Marsy's Law would ensure that victims have coequal rights as the accused and convicted, nothing more and nothing less.

I recall assisting a victim who had been strangled by her boyfriend to the point where she lost consciousness. He was arrested and charged with domestic battery by strangulation, which is a felony. The court never contacted that victim. She was never contacted about any proceedings or plea deal. They pled that case down to disturbing the peace, which is a misdemeanor. That person walked; he received a slap on the wrist. Now my victim is worried every day about that person reoffending her. She does not feel safe because the criminal justice system failed her. When we attempted to reach out to the district attorney, the decision had already been made and there was nothing we could do. There are advocates at our district attorney's office that I work with. They stand behind our victims and are the middleman between the victim and the prosecutors, but when something has already been done, it is hard to go back. I cannot imagine anyone being against granting additional rights to victims of crime, and we should all embrace that.

**Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

We are in support of the resolution.

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:

I am here in support of the resolution.

Robert Roshak, representing Nevada Sheriffs' and Chiefs' Association:

We are also in support of this resolution.

Chair Stewart:

Is there anyone else in support of this resolution? Seeing no one, is there anyone in opposition?

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender:

We are in opposition to S.J.R. 17 (R1). To be clear, when this measure was heard on the Senate side, the Washoe County Public Defender's Office was neutral, with concerns. We certainly appreciate working with all of the stakeholders involved in this legislative process. We were attempting to create language that would satisfy all of the stakeholders. We are concerned specifically with removing section 23, subsection 8: "This section is not intended and shall not be interpreted to infringe upon a right guaranteed to the defendant by the *United States Constitution* or the *Nevada Constitution*." We would like to see that stay in S.J.R. 17 (R1). If it did, we would be able to remain neutral. Because it is being amended out, we are now opposing this resolution.

In Nevada we do have a robust system. We have rights for the victims that are already codified in statute; the victim impact statement is one of the strongest that I am aware of. When I see it in practice, as a criminal practitioner, the victim not only has a right to be heard at sentencing, she has the right to have the last word. She must be heard last, and all the parties in the room must respect that.

Other rights that are codified are the bail amounts. Community safety is always a consideration when setting bail or a release on recognizance; they always take into consideration the victim's safety. I know at times the victim's rights and the rights of the accused will bump up against each other and there may be a conflict. Our concern is this conflict when it does happen and how it is resolved within the district courts and the justice courts system. I appreciate the comments when talking about the Sixth Amendment rights, to confront the accused or have a speedy trial. Who wins when there is a conflict? These are our concerns that I think were addressed adequately in section 23, subsection 8, and we would like to see that language remain within S.J.R. 17 (R1).

Steve Yeager, representing Clark County Public Defender's Office:

The Clark County Public Defender's Office is opposed to removing section 23, subsection 8. We were also neutral on the resolution on the Senate side. If this section were to remain in the resolution, we would still be neutral. We believe section 23, subsection 8, gives the court guidance in the remote chance that there is a conflict under the *Nevada Constitution* between the victim and the defendant.

Vanessa Spinazola, representing American Civil Liberties Union of Nevada:

We are opposed to this resolution, in particular section 23, subsection 8. The rights of the accused have been of paramount importance in America since the founding of this country. They are protected by the Fourth, Fifth, Sixth, and Eighth Amendments. All of those amendments have stood the test of time. At a time when we are not even adequately funding our rural community indigent defense systems, we should not be interjecting additional obstacles for the innocent accused when they are trying to protect their liberty.

This resolution creates a false dichotomy between survivors of crime and those convicted of crime. Some people who are abused as children turn around and abuse other people. Some survivors turn to alcohol and drugs as a way to numb the pain, and their addiction leads them to crime. By adding layers against which the accused must fight, we may very well be revictimizing people who are victims and involved in the criminal justice system.

We should promote policies and programs that help survivors, the accused, and the convicted rebuild their lives so that cycles of violence for all people can end and everyone can live a healthy and productive life. Permitting survivors to have standing in the criminal process will, by definition, extend the criminal proceedings. This means more jail time for people, more loss of liberty, and more costs to the State of Nevada. We heard today about a 30-day check-in hearing. That is a hearing where potentially there will be a loss of liberty involved. These are additional tax dollars that should be spent on resources for survivors, trauma counseling, prevention of crime, and other programs of that nature instead of spending more money on incarcerating our way out of problems. We should be looking at preventing crime. I have not heard anything today that we will get more or find more accused people. All the stories I have heard said that everyone was convicted and spent time in prison. I am not hearing how this bill will prevent future crime and increase more public safety. I urge you to vote against it.

Chair Stewart:

Is there anyone else in opposition? Seeing no one, is there anyone in the neutral position? [There was no one.] Ms. Garvin, would you like to make a final statement?

Meg Garvin:

The section that seems to be most contentious is, with regard to the U.S. constitutional rights, superfluous and absolutely unnecessary in this bill. With regard to the *Nevada Constitution*, it is the job of the courts to figure out

which rights take precedent in a particular moment. They are experts at it; they do it daily. This provision has not existed in any victims' rights provisions across the country, so I urge you to accept the amendment.

Chair Stewart:

I will close the hearing on Senate Joint Resolution 17 (1st Reprint) and open the hearing on Senate Bill 5 (1st Reprint).

Senate Bill 5 (1st Reprint): Revises provisions governing elections for nonpartisan offices. (BDR 24-90)

Assemblyman Jim Wheeler, Assembly District No. 39:

I am introducing Senate Bill 5 (1st Reprint) on behalf of Senator Settelmeyer. As you may remember, in many of the nonpartisan primary elections throughout the state, there will be three or four persons on the ballot, and one person will come out an obvious victor. Sitting next to me is one of those people, Ron Pierini, Sheriff of Douglas County, who won his primary race by 70 percent over two other candidates last year. He went on to win the general election over the second-place primary candidate by 70 percent also. We see this happen often.

That is what S.B. 5 (R1) fixes. This bill seems rather lengthy, but it affects many different city charters. Section 1 is existing *Nevada Revised Statutes*. Section 2 deletes language that is no longer necessary to the changes in section 1. Section 3 makes necessary changes to Carson City's charter. I just found out that there is a problem with the bill. The Committee Counsel will explain that issue.

Kevin Powers, Committee Counsel:

Our concerns are with three different types of bipartisan offices. That is, justices of the supreme court, court of appeals judges, and district court judges. Each of the constitutional provisions governing those offices provides that those judges and justices have to be elected at the general election. The technical amendment would be in section 1, subsection 6. We would deal with those three offices by providing if the candidate for one of those offices receives the majority at the primary, that candidate would still go to the general election, but only that candidate. So if a candidate receives the majority at the primary, only that candidate would go to the general, and would be selected if he received at least one vote. That would conform to the *Constitution* for providing those three offices to be elected at the general election.

SJR17 – Marsy’s Law

Proposed Friendly Amendments

Legislative Operations and Elections

Blue = Language used in the Senate passed version

Green = New Language

~~Red = Language to be removed~~

- 23.1(e) To refuse an interview or deposition request, unless under court order ~~or subpoena~~, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
- 23.1(h) To be reasonably heard, upon request, ~~and at the discretion of the court,~~ at any public proceeding, including any delinquency proceedings, in the district court involving a post-arrest release decision release, sentencing, or any parole proceeding. ~~post-conviction release decision or any proceeding in which a right of the victim is at issue.~~
- 23.8 ~~This section is not intended and shall not be interpreted to infringe upon a right guaranteed to the defendant by United States Constitution or the Nevada Constitution.~~



May 12, 2015

Chairman Lynn Stewart
Committee on Legislative Operations and Elections
Nevada State Assembly
Legislative Building
Carson City, NV 89701

RE: SJR 17- SUPPORT

Chairman Stewart and Members of the Committee:

My name is Kristy Oriol. I am the Policy Specialist at the Nevada Network Against Domestic Violence (NNADV), the statewide coalition of domestic violence programs in Nevada. I am here today to express NNADV's support for SJR 17, which would provide constitutional protections for victims of crime. This Resolution is greatly valuable to victims of domestic and sexual violence.

Navigating the legal system and determining rights is to say the least an overwhelming process for victims. At worst, it is terrifying and can lead to repeated re-victimization. After a traumatic event such as being abused or sexually assaulted by an intimate partner, the last thing a victim often thinks of is her or his constitutional rights. If a victim does decide to engage the legal system, the process can be incredibly confusing. Victim advocates in Nevada provide a necessary support for victims in navigating the legal system, however many victims do not ever make it that point due to fear of reporting and a lack of clarity of the legal process.

Victims that do report abuse commonly change their minds about prosecuting and are confused to find out that prosecution can move forward without their consent. While

this is an unavoidable reality in prosecuting domestic violence crimes, we can and should do more to give victims a voice during prosecution by ensuring that they are aware of their constitutional rights. By expanding the constitutional protections for victims, perhaps more victims will feel more comfortable with prosecuting their abusers.

In addition to the benefit SJR 17 offers to direct victims, it also guarantees the constitutional rights for victim families. Nevada has the sixth highest rate among U.S. states for women being killed by men, according to the latest Violence Policy Center report. Nevada ranked in the top 10 nine of the last 10 years for the rate of women being killed by men, falling to No. 16 last year. It was ranked No. 1 for the three years prior to that. Losing a daughter, mother or sister at the hands of an intimate partner is a devastating reality that many Nevada families face each year. SJR 17 would allow these family members to stay involved with the prosecution of the defendant and know their rights.

We are grateful to Senator Roberson and the supporters of SJR 17. Nevada victims and their families deserve the right to know what is afforded to them. During times of crisis, it is almost impossible for victims to retain everything that is told to them by law enforcement, advocates, family and attorneys. SJR 17 puts all of this information in a single location for the victim to review when he or she is ready. We strongly urge your support.

Sincerely,

Kristy Oriol
Policy Specialist, NNADV
530-414-6729

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Eighth Session
May 14, 2015**

The Committee on Legislative Operations and Elections was called to order by Chair Lynn D. Stewart at 4:11 p.m. on Thursday, May 14, 2015, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, 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/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Lynn D. Stewart, Chair
Assemblywoman Shelly M. Shelton, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Michele Fiore
Assemblyman John Moore
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



argument about this being distinguishable because it is two officers, both from the Executive Branch of government, but the Lieutenant Governor also has a legislative role as well.

Looking back at history, there have been times where there was a Governor of one party and a Lieutenant Governor of another party who have been at odds. I think of Governor Bob Miller and Lieutenant Governor Lonnie Hammargren, and the examples that were brought up with Governor Grant Sawyer and Lieutenant Governor Paul Laxalt. There have been some great Lieutenant Governors elected who were of the opposite party. Myron Leavitt was a Democratic Lieutenant Governor under Governor Robert List, who was a Republican, so I am hesitant to take that right away from the voters. I know it would be more convenient for whomever wins the office of Governor to have someone from the same party in that office, but I believe that the voters know what they are doing. Sometimes they want divided government and people from different parties to keep an eye on each other, so I am voting no.

Chair Stewart:

Is there any further discussion? [There was none.]

THE MOTION FAILED. (ASSEMBLYMEN FIORE, MOORE,
OHRENSCHALL, SEAMAN, AND SHELTON VOTED NO.)

Next we will hear Senate Joint Resolution 17 (1st Reprint).

Senate Joint Resolution 17 (1st Reprint): Proposes to amend the *Nevada Constitution* to expand the rights guaranteed to victims of crime. (BDR C-952)

Carol M. Stonefield, Committee Policy Analyst:

Senate Joint Resolution 17 (1st Reprint) was heard in this Committee on May 12, and presented by Senator Michael Roberson. This resolution proposes to amend the *Nevada Constitution* by eliminating existing victims' rights provisions found in Article 1, Section 8, and replacing them with an expanded set of provisions in the form of a victims' bill of rights. [Work session document (Exhibit L).]

There is an amendment (Exhibit M) that is behind the bill page which is similar to the one that was discussed in the hearing for the resolution. This conceptual amendment varies only in that these individuals are urging that in section 23, subsection 1, paragraph (h), the word "district" as applied to court is eliminated

because they view that as limiting it just to the district court and so their proposal would read "in the court involving release, sentencing, or any parole proceeding."

Chair Stewart:

Mr. Powers, did you have any comment on the amendment?

Kevin Powers, Committee Counsel:

No, we can accomplish amendments in the drafting process, take them from their conceptual form, and turn them into an amendment.

Chair Stewart:

Is there a motion to amend and do pass S.J.R. 17 (R1)?

ASSEMBLYWOMAN SEAMAN MOVED TO AMEND AND DO PASS
SENATE JOINT RESOLUTION 17 (1ST REPRINT).

ASSEMBLYMAN TROWBRIDGE SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Fiore:

After heavy debate and thoughts on this bill, I believe it needs to be in our statutes. I am fearful of setting precedents every time the Legislature is in session that we tinker with our *Constitution*. So because I do not want our *Constitution* tinkered with every session, I vote no.

Assemblyman Elliot T. Anderson:

I have similar concerns to those of Assemblywoman Fiore. I think a lot of it makes sense, and I would support it if it were going into statutes. I believe that we run into interpretation issues between the intersection of a proposed victim's constitutional rights and well-worn constitutional bedrocks that we have to protect people from the power of the state. We talk about the Fifth and Sixth Amendments and all amendments that were fought and bled for. I understand where the proponents are coming from. The Assembly has already passed a victims' rights bill this session to protect people that are vulnerable victims, and I think that the Assembly is more than willing to make that consideration. I know that in the Judiciary Committee, victims are well advocated for and they should be. It is a matter of where this is being put and, in particular, I think that removing the language in the amendment stating that these proposed measures could not infringe is especially problematic, and I think that was what gave people comfort in the Senate when it passed. For those reasons, I will be voting a respectful no.

Chair Stewart:

Are there any other comments?

THE MOTION FAILED. (ASSEMBLYMEN ELLIOT T. ANDERSON, FIORE, MOORE, MUNFORD, OHRENSCHALL, AND THOMPSON VOTED NO.)

Thank you all for being here. We are going to recess at this time in case some matter comes up. We will adjourn behind the bar tomorrow. [The meeting recessed at 4:47 p.m.]

[The meeting reconvened on the fourth floor of the Assembly on May 15, 2015, at 11:55 a.m.]

Chair Stewart:

[Roll was taken.]

We are here to reconsider and vote on Senate Joint Resolution 3 (1st Reprint), Senate Joint Resolution 17 (1st Reprint), and Senate Bill 274 (1st Reprint).

Is there a motion to reconsider S.J.R. 3 (R1)?

ASSEMBLYWOMAN SEAMAN MADE A MOTION TO RECONSIDER SENATE JOINT RESOLUTION 3 (1ST REPRINT).

ASSEMBLYMAN THOMPSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN MOORE, OHRENSCHALL, AND SHELTON VOTED NO.)

I will consider a motion to do pass S.J.R. 3 (R1).

ASSEMBLYWOMAN SEAMAN MADE A MOTION TO DO PASS SENATE JOINT RESOLUTION 3 (1ST REPRINT).

ASSEMBLYMAN MOORE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN MOORE, MUNFORD, OHRENSCHALL, AND SHELTON VOTED NO.)

The next bill is Senate Joint Resolution 17 (1st Reprint). May I have a motion to reconsider S.J.R. 17 (R1)?

ASSEMBLYWOMAN SEAMAN MADE A MOTION TO RECONSIDER
SENATE JOINT RESOLUTION 17 (1ST REPRINT).

ASSEMBLYWOMAN SHELTON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON,
MUNFORD, OHRENSCHALL, AND THOMPSON VOTED NO.)

I will consider a motion to amend and do pass S.J.R. 17 (R1).

ASSEMBLYWOMAN FIORE MOVED TO AMEND AND DO PASS
SENATE JOINT RESOLUTION 17 (1ST REPRINT).

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON,
MUNFORD, OHRENSCHALL, AND THOMPSON VOTED NO.)

The last bill is Senate Bill 274 (1st Reprint). Is there a motion to reconsider
S.B. 274 (R1)?

ASSEMBLYWOMAN FIORE MADE A MOTION TO RECONSIDER
SENATE BILL 274 (1ST REPRINT).

ASSEMBLYWOMAN SHELTON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON
AND THOMPSON VOTED NO.)

I will consider a motion to do pass S.B. 274 (R1).

ASSEMBLYMAN OHRENSCHALL MADE A MOTION TO DO PASS
SENATE BILL 274 (1ST REPRINT).

ASSEMBLYWOMAN SHELTON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON
AND THOMPSON VOTED NO.)

Are there any comments?

Assembly Committee on Legislative Operations and Elections

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

May 14, 2015

SENATE JOINT RESOLUTION NO. 17 (R1)

Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Sponsored by: Senators Roberson, Harris, and Farley, et al.
Date Heard: May 12, 2015
Fiscal Impact: Effect on Local Government: No
Effect on the State: No

Senate Joint Resolution No. 17 proposes to amend the *Nevada Constitution* by eliminating existing victims' rights provisions found in Article 1, Section 8, and replacing them with an expanded set of provisions in the form of a victims' bill of rights.

Amendments: The Chair has approved the attached amendment for consideration. Amendment was presented during the hearing for the resolution. The attached conceptual amendment varies from the original amendment by deleting the limitation to district court as that applies to the victims' right to be heard at any public proceeding involving release, sentencing or parole.

SJR17 – Marsy’s Law

Proposed Friendly Amendments

(With “district” from 23.1(h) removed to avoid inadvertently limiting language)

Legislative Operations and Elections

Blue = Language used in the Senate passed version

Green = New Language

Red = ~~Language to be removed~~

- 23.1(e) To refuse an interview or deposition request, unless under court order ~~or subpoena~~, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
- 23.1(h) To be reasonably heard, upon request, ~~and at the discretion of the court,~~ at any public proceeding, including any delinquency proceedings, in the ~~district court~~ involving a post-arrest release decision release, sentencing, or any parole proceeding. ~~post-conviction release decision or any proceeding in which a right of the victim is at issue.~~
- 23.8 ~~This section is not intended and shall not be interpreted to infringe upon a right guaranteed to the defendant by United States Constitution or the Nevada Constitution.~~

SJR17 – Marsy’s Law

Proposed Friendly Amendments

(With “district” from 23.1(h) removed to avoid inadvertently limiting language)

Legislative Operations and Elections

Blue = Language used in the Senate passed version

Green = New Language

Red = Language to be removed

- 23.1(e) To refuse an interview or deposition request, unless under court order ~~or subpoena~~, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
- 23.1(h) To be reasonably heard, upon request, ~~and at the discretion of the court,~~ at any public proceeding, including any delinquency proceedings, in the district court involving a post-arrest release decision release, sentencing, or any parole proceeding. ~~post-conviction release decision or any proceeding in which a right of the victim is at issue.~~
- 23.8 ~~This section is not intended and shall not be interpreted to infringe upon a right guaranteed to the defendant by United States Constitution or the Nevada Constitution.~~

THE ONE HUNDRED AND SIXTH DAY

CARSON CITY (Monday), May 18, 2015

Assembly called to order at 1:04 p.m.

Mr. Speaker presiding.

Roll called.

All present except Assemblywoman Fiore, who was excused.

Prayer by the Chaplain, Lieutenant Mark Cyr.

Father, we come to You today seeking Your guidance. We ask for Your Holy Spirit to be present in our State Assembly today. Unite, comfort, empower, encourage, and strengthen our leaders to be faithful to their state and its people. We ask for You to bless them, their families, and homes as well. Protect them, be with them, and give them a clear vision for the future of our state. Lord, let your light shine in their lives and their work. Father, we pray these things in the precious name of Jesus.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Paul Anderson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Commerce and Labor, to which was rereferred Assembly Bill No. 481, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Commerce and Labor, to which was referred Senate Bill No. 50, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Commerce and Labor, to which was referred Senate Bill No. 84, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Commerce and Labor, to which was referred Senate Bill No. 223, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

RANDY KIRNER, *Chair*

Mr. Speaker:

Your Committee on Government Affairs, to which were referred Senate Bills Nos. 238, 254, 340, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Government Affairs, to which was referred Senate Bill No. 285, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Government Affairs, to which was referred Senate Bill No. 401, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Government Affairs, to which was referred Senate Bill No. 477, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOHN C. ELLISON, *Chair*

Mr. Speaker:

Your Committee on Health and Human Services, to which were referred Senate Bills Nos. 33, 35, 114, 314, 441, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Health and Human Services, to which was referred Senate Bill No. 88, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Health and Human Services, to which were referred Senate Bills Nos. 257, 402, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JAMES OSCARSON, *Chair*

Mr. Speaker:

Your Committee on Legislative Operations and Elections, to which were referred Senate Bills Nos. 19, 274, 293, 403, 499; Senate Joint Resolution No. 3, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Legislative Operations and Elections, to which were referred Senate Bills Nos. 5, 307; Senate Joint Resolution No. 17, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

LYNN D. STEWART, *Chair*

Mr. Speaker:

Your Committee on Taxation, to which were referred Senate Bills Nos. 74, 78, 94, 155, 377, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Taxation, to which was referred Senate Bill No. 334, has had the same under consideration, and begs leave to report the same back with the recommendation: Without recommendation, and rerefer to the Committee on Ways and Means.

DEREK ARMSTRONG, *Chair*

Mr. Speaker:

Your Committee on Transportation, to which were referred Senate Bills Nos. 183, 410, 457, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Transportation, to which were referred Senate Bills Nos. 144, 188, 209, 376, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JIM WHEELER, *Chair*

Mr. Speaker:

Your Committee on Ways and Means, to which were referred Assembly Bills Nos. 437, 477, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Ways and Means, to which was rereferred Assembly Bill No. 21, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Ways and Means, to which was rereferred Assembly Bill No. 5, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass, as amended.

PAUL ANDERSON, *Chair*

THE ONE HUNDRED AND SEVENTH DAY

CARSON CITY (Tuesday), May 19, 2015

Assembly called to order at 12:31 p.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Lieutenant Mark Cyr.

My Heavenly Father, we come to You with thankfulness for the blessings You give us. We thank You for our State Assembly members and their faithfulness. We ask You to be with them and bless them. We ask that You fill them with Your wisdom and strength. Guide them as they lead us and unite them together as one voice for what is best for our state and its people. Give them courage, vision, wisdom, and truth. Father we pray these things in the name of Your Son Jesus.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Paul Anderson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

Mr. Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 12:43 p.m.

ASSEMBLY IN SESSION

At 12:44 p.m.

Mr. Speaker presiding.

Quorum present.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Commerce and Labor, to which was rereferred Assembly Bill No. 480, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended and rerefer to the Committee on Ways and Means.

Also, your Committee on Commerce and Labor, to which were referred Senate Bills Nos. 12, 162, 168, 181, 241, 286, 393, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

RANDY KIRNER, *Chair*

them from having sprinkler systems. Could you maybe explain to me a little more about the conversation that went on as to why this amendment is necessary?

ASSEMBLYMAN ELLISON:

One of the things you have in agricultural centers or rodeo grounds are open facilities. They are large; they have no insulation. If there is a fire, it is going to be contained unless it is a place where there is hay. But if you try to sprinkle any place outside of Clark County—Washoe, Elko, all these other counties—there is no way you can keep these pipes from freezing and breaking. It would create more problems than what you started with. The only place that this was proposed was for Clark County, and this will go back and we will discuss it in great detail.

ASSEMBLYMAN WHEELER:

I believe the amendment in subsection 4 refers to an agricultural, livestock, or equestrian building that is covered but not enclosed. So in other words, it has no sides on it, just a roof. The idea is for areas such as rodeo arenas or open arenas, anywhere that has spectator seating where there are no walls to catch fire and most of these have metal roofs anyway.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 499.

Bill read second time and ordered to third reading.

Senate Joint Resolution No. 3.

Resolution read second time and ordered to third reading.

Senate Joint Resolution No. 17.

Resolution read second time.

The following amendment was proposed by the Committee on Legislative Operations and Elections:

Amendment No. 834.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

Under the Nevada Constitution, the Legislature is required to provide by law for certain rights of the victims of crimes, in particular, the right to be informed of the status of criminal proceedings concerning those crimes, the right to be present at public hearings concerning those crimes and the right to be heard at all proceedings for the sentencing or release of persons convicted of those crimes. (Nev. Const. Art. 1, § 8)

This resolution proposes to amend the Nevada Constitution to eliminate the existing provisions of Article 1, section 8, concerning victims' rights and to add a new section that sets forth an expanded list of such rights in the form of a victims' bill of rights. The new section is modeled after the victims' bill of rights set forth in the California Constitution as it was amended in 2008 by what is commonly referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 23, be added to Article 1 of the Nevada Constitution to read as follows:

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family.

(e) To refuse an interview or deposition request, unless under court order ~~for subpoena~~, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(f) To reasonably confer with the prosecuting agency, upon request, regarding the case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be reasonably heard, upon request, ~~and at the discretion of the court,~~ at any public proceeding, including any delinquency proceeding, in any court involving ~~a postarrest release decision, release or sentencing, postconviction release decision or any proceeding in which a right of the victim is at issue,~~ and at any parole proceeding.

(i) To the timely disposition of the case following the arrest of the defendant.

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(l) To full and timely restitution.

(m) To the prompt return of legal property when no longer needed as evidence.

(n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered

before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(o) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

(p) To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim.

(q) To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.

2. A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case. The court shall promptly rule on a victim's request. A defendant does not have standing to assert the rights of his or her victim. This section does not alter the powers, duties or responsibilities of a prosecuting attorney. A victim does not have the status of a party in a criminal proceeding.

3. Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction.

4. A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.

5. The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

6. The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.

7. As used in this section, "victim" means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.

~~*[8. This section is not intended and shall not be interpreted to infringe upon a right guaranteed to the defendant by the United States Constitution or the Nevada Constitution.]*~~

And be it further

RESOLVED, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

2. ~~{The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~—3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~—4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~—5.} No person shall be deprived of life, liberty, or property, without due process of law.~~

~~{6.} 3. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.~~

Assemblyman Stewart moved the adoption of the amendment.

Remarks by Assemblymen Stewart and Elliot Anderson.

ASSEMBLYMAN STEWART:

Amendment 834 further clarifies that the victim has a reasonable right to be heard in any public proceedings involving the defendant.

ASSEMBLYMAN ELLIOT ANDERSON:

I rise in opposition to amendment 834 to Senate Joint Resolution 17.

If I could direct the body's attention to page 4 of the amendment, lines 23 through 25, the amendment strikes out the language "This section is not intended and shall not be interpreted to infringe upon a right guaranteed to the defendant by the *United States Constitution* or the *Nevada Constitution*." This is a bad provision which I believe, by crossing this out, makes the bill potentially unconstitutional. It would create an interpretation nightmare for our Supreme Court. I urge that this amendment be rejected.

Amendment adopted.

Resolution ordered reprinted, reengrossed and to the General File.

GENERAL FILE AND THIRD READING

Senate Bill No. 419.

Bill read third time.

The following amendment was proposed by Assemblyman Oscarson:

Amendment No. 794.

AN ACT relating to persons with disabilities; creating the Nevada ABLE Savings Program as a qualified ABLE program under the federal Achieving a Better Life Experience Act of 2014; authorizing the creation of a program within the Aging and Disability Services Division of the Department of Health and Human Services to provide independent living services and assistive technology for persons with disabilities who need independent living services; revising the terms of members of the Nevada Commission on Services for Persons with Disabilities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Recently enacted federal law allows for the creation of tax-advantaged savings accounts for persons who have certain qualifying disabilities. Under the program, any person, including family members, may make a contribution to the account of a person with a qualified disability. Any interest or other growth in the value of the account and distributions taken from the account are tax free. The maximum amount that can be contributed tax free to the account of a qualified person is \$14,000 per year. Distributions from the account may only be used to pay expenses related to living a life with a disability and may include such things as education, housing, transportation and employment training and support. Money in the account or distributions from the account do not affect the eligibility of a person for certain public benefits such as Social Security disability payments, Supplemental Nutrition Assistance Program benefits and Medicaid. To qualify for these benefits, the savings account into which contributions are made on behalf of a qualified person must be established and maintained by the qualified person's state of residence. If a state chooses not to establish its own program, it may contract with another state that has adopted a qualified program. (Achieving a Better Life Experience Act of 2014, 26 U.S.C. § 529A) **Sections 2-15** of this bill require the **State Treasurer, in cooperation with the** Aging and Disability Services Division of the Department of Health

SENATE JOINT RESOLUTION NO. 17—SENATORS ROBERSON,
HARRIS, FARLEY; HARDY AND SETTELMAYER

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Proposes to amend the Nevada Constitution to
expand the rights guaranteed to victims of crime.
(BDR C-952)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada
Constitution to expand the rights guaranteed to victims of
crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

1 Under the Nevada Constitution, the Legislature is required to provide by law
2 for certain rights of the victims of crimes, in particular, the right to be informed of
3 the status of criminal proceedings concerning those crimes, the right to be present
4 at public hearings concerning those crimes and the right to be heard at all
5 proceedings for the sentencing or release of persons convicted of those crimes.
6 (Nev. Const. Art. 1, § 8)
7 This resolution proposes to amend the Nevada Constitution to eliminate the
8 existing provisions of Article 1, section 8, concerning victims' rights and to add a
9 new section that sets forth an expanded list of such rights in the form of a victims'
10 bill of rights. The new section is modeled after the victims' bill of rights set forth in
11 the California Constitution as it was amended in 2008 by what is commonly
12 referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

1 RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF
2 NEVADA, JOINTLY, That a new section, designated Section 23, be
3 added to Article 1 of the Nevada Constitution to read as follows:
4 *Sec. 23. 1. Each person who is the victim of a crime*
5 *is entitled to the following rights:*



1 (a) *To be treated with fairness and respect for his or her*
2 *privacy and dignity, and to be free from intimidation,*
3 *harassment and abuse, throughout the criminal or juvenile*
4 *justice process.*

5 (b) *To be reasonably protected from the defendant and*
6 *persons acting on behalf of the defendant.*

7 (c) *To have the safety of the victim and the victim's*
8 *family considered as a factor in fixing the amount of bail*
9 *and release conditions for the defendant.*

10 (d) *To prevent the disclosure of confidential information*
11 *or records to the defendant which could be used to locate or*
12 *harass the victim or the victim's family.*

13 (e) *To refuse an interview or deposition request, unless*
14 *under court order, and to set reasonable conditions on the*
15 *conduct of any such interview to which the victim consents.*

16 (f) *To reasonably confer with the prosecuting agency,*
17 *upon request, regarding the case.*

18 (g) *To reasonable notice of all public proceedings,*
19 *including delinquency proceedings, upon request, at which*
20 *the defendant and the prosecutor are entitled to be present*
21 *and of all parole or other postconviction release*
22 *proceedings, and to be present at all such proceedings.*

23 (h) *To be reasonably heard, upon request, at any public*
24 *proceeding, including any delinquency proceeding, in any*
25 *court involving release or sentencing, and at any parole*
26 *proceeding.*

27 (i) *To the timely disposition of the case following the*
28 *arrest of the defendant.*

29 (j) *To provide information to any public officer or*
30 *employee conducting a presentence investigation*
31 *concerning the impact of the offense on the victim and the*
32 *victim's family and any sentencing recommendations before*
33 *the sentencing of the defendant.*

34 (k) *To be informed, upon request, of the conviction,*
35 *sentence, place and time of incarceration, or other*
36 *disposition of the defendant, the scheduled release date of*
37 *the defendant and the release of or the escape by the*
38 *defendant from custody.*

39 (l) *To full and timely restitution.*

40 (m) *To the prompt return of legal property when no*
41 *longer needed as evidence.*

42 (n) *To be informed of all postconviction proceedings, to*
43 *participate and provide information to the parole authority*
44 *to be considered before the parole of the offender and to be*



1 notified, upon request, of the parole or other release of the
2 offender.

3 (o) To have the safety of the victim, the victim's family
4 and the general public considered before any parole or
5 other postjudgment release decision is made.

6 (p) To have all monetary payments, money and property
7 collected from any person who has been ordered to make
8 restitution be first applied to pay the amounts ordered as
9 restitution to the victim.

10 (q) To be specifically informed of the rights enumerated
11 in this section, and to have information concerning those
12 rights be made available to the general public.

13 2. A victim has standing to assert the rights
14 enumerated in this section in any court with jurisdiction
15 over the case. The court shall promptly rule on a victim's
16 request. A defendant does not have standing to assert the
17 rights of his or her victim. This section does not alter the
18 powers, duties or responsibilities of a prosecuting attorney.
19 A victim does not have the status of a party in a criminal
20 proceeding.

21 3. Except as otherwise provided in subsection 4, no
22 person may maintain an action against this State or any
23 public officer or employee for damages or injunctive,
24 declaratory or other legal or equitable relief on behalf of a
25 victim of a crime as a result of a violation of this section or
26 any statute enacted by the Legislature pursuant thereto. No
27 such violation authorizes setting aside a conviction.

28 4. A person may maintain an action to compel a public
29 officer or employee to carry out any duty required by this
30 section or any statute enacted by the Legislature pursuant
31 thereto.

32 5. The granting of these rights to victims must not be
33 construed to deny or disparage other rights possessed by
34 victims. A parole authority shall extend the right to be heard
35 at a parole hearing to any person harmed by the offender.

36 6. The Legislature shall by law provide any other
37 measure necessary or useful to secure to victims of crime
38 the benefit of the rights set forth in this section.

39 7. As used in this section, "victim" means any person
40 directly and proximately harmed by the commission of a
41 criminal offense under any law of this State. If the victim is
42 less than 18 years of age, incompetent, incapacitated or
43 deceased, the term includes the legal guardian of the victim
44 or a representative of the victim's estate, member of the
45 victim's family or any other person who is appointed by the



court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.

And be it further

RESOLVED, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

2. ~~{The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~5.]~~ No person shall be deprived of life, liberty, or property, without due process of law.



1 ~~6.~~ 3. Private property shall not be taken for public use
2 without just compensation having been first made, or secured,
3 except in cases of war, riot, fire, or great public peril, in
4 which case compensation shall be afterward made.

H



THE ONE HUNDRED AND EIGHTH DAY

CARSON CITY (Wednesday), May 20, 2015

Assembly called to order at 12:42 p.m.

Roll called.

All present.

Prayer by the Chaplain, Lieutenant Mark Cyr.

Our God in Heaven, Father we thank You for this great state of Nevada. We thank You for these leaders of our state who have worked so hard these last several months to determine the future and direction of our state. Lord, we ask Your blessing to be on our leaders and that You give them wisdom in these last couple of weeks to end well and find the proper path You have laid for our state. Lord help guide and direct them today and every day. Father, we pray these things in the precious name of Jesus.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Paul Anderson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Commerce and Labor, to which were referred Senate Bills Nos. 67, 137, 153, 193, 194, 224, 233, 250, 341, 370, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

RANDY KIRNER, *Chair*

Mr. Speaker:

Your Committee on Education, to which was referred Senate Bill No. 405, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Education, to which was referred Senate Bill No. 330, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MELISSA WOODBURY, *Chair*

Mr. Speaker:

Your Committee on Health and Human Services, to which were referred Senate Bills Nos. 6, 15, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Health and Human Services, to which was referred Senate Bill No. 148, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JAMES OSCARSON, *Chair*

3. Provide such other information as the Commissioner may require.

Assemblyman Kirner moved the adoption of the amendment.

Remarks by Assemblyman Kirner.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Paul Anderson moved that upon return from the printer, Assembly Bill No. 480 be rereferred to the Committee on Ways and Means.

Motion carried.

Assemblyman Paul Anderson moved that Senate Bills Nos. 19, 33, 307, 314, 499; Senate Joint Resolution No. 17 be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

Assemblyman Paul Anderson moved that Senate Bills Nos. 114, 274, 340, 402, 403; Senate Joint Resolution No. 3 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

Assemblyman Paul Anderson moved that Senate Bill No. 476 be taken from the Chief Clerk's desk and placed at the bottom of the General File.

Motion carried

Assemblyman Paul Anderson moved that Senate Bill No. 254 be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

Assemblyman Paul Anderson moved that Assembly Bill No. 481 be taken from the General File and rereferred to the Committee on Ways and Means.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 199.

Bill read third time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 797.

AN ACT relating to public health; abolishing certain advisory committees and bodies within the Department of Health and Human Services; revising provisions governing the State Program for Wellness and the Prevention of Chronic Disease; revising provisions governing the Medical Care Advisory Group within the Division of Health Care Financing and Policy of the

THE ONE HUNDRED AND NINTH DAY

CARSON CITY (Thursday), May 21, 2015

Assembly called to order at 1:03 p.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Lieutenant Leslie Cyr.

Father God, we thank You for this day, and we invite you to be present in this place of government. We ask for Your leading and Your guidance to rest on these leaders of our state. We ask for Your spirit to bring peace and unity over the decisions that are being made and that You would grant them wisdom to see clearly the needs of Nevada and its people. We thank You, Father, for their service and the personal sacrifices they have made over these last several months and ask that You would bless them and their families as they finish these remaining weeks of session. We thank You, Lord, for our freedom and we pray that we may be taking the direction You would have for us. In the name of Jesus we pray.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Paul Anderson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Commerce and Labor, to which were referred Senate Bills Nos. 68, 146, 273, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

RANDY KIRNER, *Chair*

Mr. Speaker:

Your Committee on Government Affairs, to which was referred Senate Bill No. 406, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Government Affairs, to which was referred Senate Bill No. 481, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOHN C. ELLISON, *Chair*

Mr. Speaker:

Your Committee on Judiciary, to which was referred Senate Bill No. 58, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Judiciary, to which was referred Senate Bill No. 444, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

IRA HANSEN, *Chair*

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Paul Anderson moved that Senate Bills Nos. 264, 286, 294, 307, 327, 393, 429, 477, 490, 499; Senate Joint Resolution No. 17 be taken from the General File and be placed on the General File for the next legislative day.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 134.

Bill read second time and ordered to third reading.

Senate Bill No. 154.

Bill read second time and ordered to third reading.

Senate Bill No. 160.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 853.

SUMMARY—Enacts provisions ~~governing the liability of owners, lessees or occupants of any premises for injuries to trespassers.~~ relating to civil liability for certain acts. (BDR 3-939)

AN ACT relating to actions concerning persons; enacting certain limitations of liability for owners, lessees or occupants of any premises for injuries to trespassers; providing immunity from certain civil actions for certain persons in connection with the display of public art; providing that a person who jumps or otherwise removes himself or herself, by parachute or by other airborne means, from a fixed structure owned by another person or who takes certain actions to assist another person in doing so is deemed a trespasser for the purposes of certain provisions relating to trespassers; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Traditionally, at common law, the duty of care that an owner or other lawful occupant of real property owed to a person entering onto the property was determined by the person's status as an invitee, a licensee or a trespasser. Thus, an owner or occupant of real property had a duty to exercise ordinary care and prudence to render the property reasonably safe for the visit of an invitee or to warn the invitee of certain dangerous or unsafe conditions on the property. An owner or occupant of real property who failed to exercise due care was subject to civil liability for any harm to an invitee caused by that failure. (*Galloway v. McDonalds Restaurants of Nevada, Inc.*, 102 Nev. 534, 537 (1986)) In contrast, an owner or occupant of real property had no duty to a mere trespasser except to not wantonly or willfully injure the trespasser and to exercise due care to prevent injury to the trespasser after the owner or occupant discovered the trespasser's presence in a place of danger on the

THE ONE HUNDRED AND TENTH DAY

CARSON CITY (Friday), May 22, 2015

Assembly called to order at 1:50 p.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Lieutenant Mark Cyr.

My Heavenly Father, we come to You today asking for Your guidance. Guide our State Assembly as they lead us to a better future. Lord, we ask for Your hand of blessing to be on them. Unite our leaders together to help bring a brighter future to our state. Lead them in a direction of truth that brings about genuine unity and freedom for the people of Nevada. Lord, we ask for Your presence throughout today's meeting: in our hearts, in our thoughts, and in our agendas. Father we pray these things in the name above all names, the precious name of Jesus.

AMEN.

Pledge of allegiance to the Flag.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Education, to which were referred Senate Bills Nos. 391, 463, 474, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MELISSA WOODBURY, *Chair*

Mr. Speaker:

Your Committee on Legislative Operations and Elections, to which was referred Senate Bill No. 510, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

LYNN D. STEWART, *Chair*

Mr. Speaker:

Your Committee on Ways and Means, to which was rereferred Assembly Bill No. 161, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass, as amended.

Also, your Committee on Ways and Means, to which was referred Senate Bill No. 503, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

PAUL ANDERSON, *Chair*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, May 21, 2015

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Assembly Bills Nos. 21, 40, 44, 132, 198, 468; Senate Bills Nos. 412, 500.

Also, I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 159, Amendment No. 835; Assembly Bill No. 173, Amendment No. 701; Assembly Bill No. 293, Amendment No. 716; Assembly Bill No. 321, Amendment No. 805; Assembly Bill No. 351, Amendment No. 781; Assembly Bill No. 386, Amendment No. 712; Assembly Bill No. 428, Amendment No. 908; Assembly Bill No. 452,

Senate Bill No. 264 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 273.

Bill read third time.

Remarks by Assemblywoman Kirkpatrick.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Roll call on Senate Bill No. 273:

YEAS—38.

NAYS—Dooling, Jones, Moore, Titus—4.

Senate Bill No. 273 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Paul Anderson moved that Senate Joint Resolution No. 17 be placed at the top of the General File.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Joint Resolution No. 17.

Resolution read third time.

Remarks by Assemblymen Stewart, Kirkpatrick, Elliot Anderson, and Paul Anderson.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Roll call on Senate Joint Resolution No. 17:

YEAS—41.

NAYS—Elliot Anderson.

Senate Joint Resolution No. 17 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Resolution ordered transmitted to the Senate.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Bills Nos. 13, 16, 45, 46, 48, 60, 68, 78, 120, 164, 273, 435, 442, 465; Senate Bills Nos. 35, 62, 74, 78, 88, 94, 155, 268, 293, 303, 377, 410, 441 and 457.

Assemblyman Paul Anderson moved that the Assembly recess until 6 p.m. Motion carried.

Assembly in recess at 3:54 p.m.

THE ONE HUNDRED AND THIRTEENTH DAY

CARSON CITY (Monday), May 25, 2015

Senate called to order at 7:31 p.m.

President Hutchison presiding.

Roll called.

All present except Senator Smith, who was excused.

Prayer by the Chaplain, Pastor Bruce Henderson.

Our Dear Heavenly Father,

Yesterday, many of us heard the words "This do in remembrance of Me." We then partook of a memorial meal and remembered the greatest of all sacrifices.

We observe today in remembrance of more recent sacrifices, and we honor those who have given their time, efforts and even their lives on behalf of our country, our flag and our freedoms. Lord, may Your sacrifice and the sacrifices of all these men and women give us the strength, courage, peace and love to finish up our work here.

Thank You for the gift of giving.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Finance, to which was re-referred Senate Bill No. 489, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Finance, to which was re-referred Senate Bill No. 133, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass as amended.

Also, your Committee on Finance, to which were referred Senate Bills Nos. 69, 491, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Finance, to which was re-referred Senate Bill Nos. 498, 509 has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Finance, to which was re-referred Senate Bill No. 299, has had the same under consideration, and begs leave to report the same back with the recommendation: Re-refer to the Committee on Commerce, Labor and Energy.

BEN KIECKHEFER, *Chair*

Mr. President:

Your Committee on Legislative Operations and Elections, to which was referred Assembly Bill No. 242, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

PATRICIA FARLEY, *Chair*

Mr. President:

Your Committee on Revenue and Economic Development, to which was referred Senate Joint Resolution No. 13, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MICHAEL ROBERSON, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 22, 2015

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bills Nos. 76, 114, 134, 154, 175, 183, 206, 229, 264, 286, 294, 314, 329, 388, 393, 405, 409, 443, 445, 446, 453, 464, 471, 472, 484, 490, 499; Senate Joint Resolution No. 21; Assembly Bill No. 470.

Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bills Nos. 448, 486.

Also, I have the honor to inform your honorable body that the Assembly amended, and on this day passed, as amended, Senate Bill No. 6, Amendment No. 845; Senate Bill No. 15, Amendment No. 891; Senate Bill No. 53, Amendment No. 904; Senate Bill No. 56, Amendments Nos. 789, 914; Senate Bill No. 58, Amendment No. 741; Senate Bill No. 67, Amendment No. 757; Senate Bill No. 68, Amendments Nos. 756, 962; Senate Bill No. 95, Amendment No. 814; Senate Bill No. 110, Amendment No. 807; Senate Bill No. 137, Amendment No. 760; Senate Bill No. 146, Amendment No. 840; Senate Bill No. 148, Amendment No. 846; Senate Bill No. 153, Amendment No. 723; Senate Bill No. 160, Amendment No. 853; Senate Bill No. 168, Amendment No. 941; Senate Bill No. 172, Amendment No. 735; Senate Bill No. 193, Amendment No. 839; Senate Bill No. 194, Amendment No. 759; Senate Bill No. 224, Amendment No. 865; Senate Bill No. 225, Amendment No. 928; Senate Bill No. 233, Amendment No. 724; Senate Bill No. 239, Amendment No. 857; Senate Bill No. 247, Amendment No. 783; Senate Bill No. 250, Amendment No. 758; Senate Bill No. 262, Amendment No. 858; Senate Bill No. 273, Amendment No. 726; Senate Bill No. 304, Amendment No. 880; Senate Bill No. 305, Amendment No. 787; Senate Bill No. 307, Amendment No. 796; Senate Bill No. 327, Amendment No. 894; Senate Bill No. 330, Amendment No. 750; Senate Bill No. 340, Amendment No. 824; Senate Bill No. 341, Amendment No. 841; Senate Bill No. 348, Amendment No. 791; Senate Bill No. 370, Amendment No. 838; Senate Bill No. 395, Amendment No. 859; Senate Bill No. 404, Amendment No. 887; Senate Bill No. 406, Amendment No. 825; Senate Bill No. 411, Amendment No. 819; Senate Bill No. 442, Amendment No. 959; Senate Bill No. 444, Amendment No. 861; Senate Bill No. 447, Amendments Nos. 860; 953 Senate Bill No. 458, Amendments Nos. 866, 956; Senate Bill No. 463, Amendment No. 934; Senate Bill No. 477, Amendment No. 738; Senate Bill No. 481, Amendments Nos. 782, 952; Senate Bill No. 482, Amendment No. 930; Senate Joint Resolution No. 17, Amendment No. 834, and respectfully requests your honorable body to concur in said amendments.

CAROL AIELLO SALA

Assistant Chief Clerk of the Assembly

ASSEMBLY CHAMBER, Carson City, May 23, 2015

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 678 to Assembly Bill No. 175.

CAROL AIELLO SALA

Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Senator Kieckhefer moved that Senate Bill No. 299, just reported out of Committee, be re-referred to the Committee on Commerce Labor and Energy.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 448.

THE ONE HUNDRED AND SIXTEENTH DAY

CARSON CITY (Thursday), May 28, 2015

Senate called to order at 2:39 p.m.

President Hutchison presiding.

Roll called.

All present except Senators Farley, Hardy, Kieckhefer and Segerblom, who were excused.

Prayer by Senator Moises Denis.

Our Heavenly Father, we are so thankful this day for the blessings of life and health. We are thankful for the support of our families that help us and give us the opportunity to serve here in the Legislature. We are thankful for the blessing of living in a great Country and living in this great State of Nevada.

We ask that Thou will help us that we might remember Thee and seek Thy guidance each and every day, especially at this critical time in this Legislative Session. Help us to be patient with one another, especially in these coming days. Bless us and our loved ones as we serve. Bless us with health and strength. Bless us to be patient. Bless our colleagues down the hall in the Assembly Chamber as they deliberate; that they can work together to help us come to solutions to finish this Session.

As Thou has said, help us to be humble that Thou will lead us by the hand and answer our prayers.

We pray these things in the Name of Jesus Christ.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Finance, to which was referred Senate Bill No. 488, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BEN KIECKHEFER, *Chair*

Mr. President:

Your Senate Committee on Parliamentary Rules and Procedures has approved the consideration of Amendment No. 915 to Senate Bill No. 99.

JAMES A. SETTELMAYER, *Chair*

Mr. President:

Your Committee on Transportation, to which was referred Assembly Bill No. 477, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

SCOTT HAMMOND, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 27, 2015

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bill No. 12.

testing irregularity investigation must make a finding of a willful breach of security or confidentiality for the penalty in the remaining portion of subsection 2 to apply.

Motion carried by a constitutional majority.

Bill ordered enrolled.

Senate Joint Resolution No. 17.

The following Assembly Amendment was read:

Amendment No. 834.

SUMMARY—Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

Under the Nevada Constitution, the Legislature is required to provide by law for certain rights of the victims of crimes, in particular, the right to be informed of the status of criminal proceedings concerning those crimes, the right to be present at public hearings concerning those crimes and the right to be heard at all proceedings for the sentencing or release of persons convicted of those crimes. (Nev. Const. Art. 1, § 8)

This resolution proposes to amend the Nevada Constitution to eliminate the existing provisions of Article 1, section 8, concerning victims' rights and to add a new section that sets forth an expanded list of such rights in the form of a victims' bill of rights. The new section is modeled after the victims' bill of rights set forth in the California Constitution as it was amended in 2008 by what is commonly referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 23, be added to Article 1 of the Nevada Constitution to read as follows:

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family.

(e) To refuse an interview or deposition request, unless under court order ~~for subpoena~~ and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(f) To reasonably confer with the prosecuting agency, upon request, regarding the case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be reasonably heard, upon request, ~~and at the discretion of the court,~~ at any public proceeding, including any delinquency proceeding, in any court involving ~~a postarrest release decision,~~ release or sentencing, ~~postconviction release decision or any proceeding in which a right of the victim is at issue,~~ and at any parole proceeding.

(i) To the timely disposition of the case following the arrest of the defendant.

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(l) To full and timely restitution.

(m) To the prompt return of legal property when no longer needed as evidence.

(n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(o) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

(p) To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim.

(q) To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.

2. A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case. The court shall promptly rule on a victim's request. A defendant does not have standing to assert the rights of his or her victim. This section does not alter the powers, duties or responsibilities of a prosecuting attorney. A victim does not have the status of a party in a criminal proceeding.

3. *Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction.*

4. *A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.*

5. *The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.*

6. *The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.*

7. *As used in this section, "victim" means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.*

~~8. This section is not intended and shall not be interpreted to infringe upon a right guaranteed to the defendant by the United States Constitution or the Nevada Constitution.~~

And be it further

RESOLVED, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

2. ~~[(The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~—3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~—4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~—5.} No person shall be deprived of life, liberty, or property, without due process of law.~~

~~{6.} 3. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.~~

Senator Brower moved that the Senate concur in Assembly Amendment No. 834 to Senate Joint Resolution No. 17.

Remarks by Senator Brower.

This amendment reflects certain improvements to the language of the resolution, and I want to thank everyone who was involved in putting this in its final shape. That includes the prosecutors in our State, the criminal defense lawyers, the victim rights advocates, the chief sponsor of the resolution, the Judiciary Committee and everyone else who had a hand on this. I think this is finally ready procedurally to be considered by the next legislature to see if it agrees that this is the right language.

Motion carried by a constitutional majority.

Resolution ordered enrolled.

Senate Bill No. 95.

The following Assembly Amendment was read.

Amendment No. 814.

SUMMARY—Revises provisions governing the publication of property tax rolls. (BDR 32-630)

AN ACT relating to property tax; revising provisions governing the publication of property tax rolls; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a county assessor is required to prepare and publish in a newspaper of general circulation in the county a list of all the taxpayers on the secured roll in the county and the total value of the property on which

Constitution is finally so approved and an amendment proposed by the Legislature is ratified which affect the same section, by the voters at the same election:

(a) If all can be given effect without contradiction in substance, each shall be given effect.

(b) If one or more contradict in substance the other or others, the measure which received the largest favorable vote, and any other approved measure compatible with it, shall be given effect. If the one or more measures that contradict in substance the other or others receive the same number of favorable votes, none of the measures that contradict another shall be given effect.

6. If, at the same election as the first approval of a constitutional amendment pursuant to this Section, another amendment is finally approved pursuant to this Section, or an amendment proposed by the Legislature is ratified, which affects the same section of the Constitution but is compatible with the amendment given first approval, the Secretary of State shall publish and resubmit at the next general election the amendment given first approval as a further amendment to the section as amended by the amendment given final approval or ratified. If the amendment finally approved or ratified contradicts in substance the amendment given first approval, the Secretary of State shall not submit the amendment given first approval to the voters again.

Senate Joint Resolution No. 17—Senators Roberson,
Harris, Farley; Hardy and Settlemeyer

FILE NUMBER 37

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

Under the Nevada Constitution, the Legislature is required to provide by law for certain rights of the victims of crimes, in particular, the right to be informed of the status of criminal proceedings concerning those crimes, the right to be present at public hearings concerning those crimes and the right to be heard at all proceedings for the sentencing or release of persons convicted of those crimes. (Nev. Const. Art. 1, § 8)

This resolution proposes to amend the Nevada Constitution to eliminate the existing provisions of Article 1, section 8, concerning victims' rights and to add a new section that sets forth an expanded list of such rights in the form of a victims' bill of rights. The new section is modeled after the victims' bill of rights set forth in the California Constitution as it was amended in 2008 by what is commonly referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, **That a new section, designated Section 23, be added to Article 1 of the Nevada Constitution** to read as follows:

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family.

(e) To refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(f) To reasonably confer with the prosecuting agency, upon request, regarding the case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing, and at any parole proceeding.

(i) To the timely disposition of the case following the arrest of the defendant.

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(l) To full and timely restitution.

(m) To the prompt return of legal property when no longer needed as evidence.

(n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(o) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

(p) *To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim.*

(q) *To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.*

2. *A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case. The court shall promptly rule on a victim's request. A defendant does not have standing to assert the rights of his or her victim. This section does not alter the powers, duties or responsibilities of a prosecuting attorney. A victim does not have the status of a party in a criminal proceeding.*

3. *Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction.*

4. *A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.*

5. *The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.*

6. *The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.*

7. *As used in this section, "victim" means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.*

And be it further

RESOLVED, **That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:**

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as

in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

2. ~~{The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~—3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~—4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~—5.} No person shall be deprived of life, liberty, or property, without due process of law.~~

~~{6.} 3. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.~~

Assembly Resolution No. 10—Committee on
Legislative Operations and Elections

FILE NUMBER 38

ASSEMBLY RESOLUTION—Designating certain members of the Assembly as regular and alternate members of the Legislative Commission for the 2015-2017 biennium.

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, That, pursuant to the provisions of NRS 218E.150 and the Joint Standing Rules of the Legislature, the following members of the Assembly are designated regular and alternate members of the Legislative Commission to serve until their successors are designated: Mr. John Hambrick, Mr. Ira Hansen, Mr. Lynn D. Stewart, Ms. Marilyn Kirkpatrick, Ms. Irene Bustamante Adams and Ms. Teresa Benitez-Thompson are designated as the regular Assembly members; Mr. Erven T. Nelson and Mr. Stephen H. Silberkraus are designated as the first and second alternate members, respectively, for Mr. John Hambrick; Mr. Derek Armstrong and Mr. Chris Edwards are designated as the first and second alternate members, respectively, for Mr. Ira Hansen; Mr. Glenn Trowbridge and Mr. Phillip "P.K." O'Neill are designated as the first and second alternate members, respectively, for Mr. Lynn D. Stewart;

SJR 17* - 2017 of the 78th (2015) Session

Introduced on: Feb 06, 2017

By: Roberson, Harris, Farley, Hardy, Settlemeyer

Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Fiscal Notes

Effect on Local Government: **No.**

Effect on State: **No.**

Most Recent History Action: File No. 47.

Past Hearings

Assembly Legislative Operations and Elections	Feb 07, 2017	Mentioned no jurisdiction
Senate Judiciary	Feb 23, 2017	Heard, No Action
Senate Judiciary	Mar 16, 2017	Do pass
Assembly Corrections, Parole, and Probation	Apr 18, 2017	Mentioned no jurisdiction
Assembly Legislative Operations and Elections	May 09, 2017	Heard
Assembly Legislative Operations and Elections	May 18, 2017	Not considered
Assembly Legislative Operations and Elections	May 19, 2017	Amend, and do pass as amended

Final Passage Votes

Senate Final Passage (**As Introduced**) Apr 17, 2017 Yea 21, Nay 0, Excused 0, Not Voting 0, Absent 0

Assembly Final Passage (**1st Reprint**) May 26, 2017 Yea 41, Nay 0, Excused 1, Not Voting 0, Absent 0

Bill Text [As Introduced](#) [1st Reprint](#) [2nd Reprint](#) [As Enrolled](#)

Other Amendments [Amend. No. 894](#)

(see bill history below)

Bill History

Feb 06, 2017	Returned from Secretary of State. Read first time. Referred to Committee on Judiciary. To printer. From printer. To committee.	
Apr 04, 2017	From committee: Do pass.	
Apr 07, 2017	Read second time.	
Apr 10, 2017	Taken from General File. Placed on General File for next legislative day.	
Apr 11, 2017	Taken from General File. Placed on General File for next legislative day.	
Apr 12, 2017	Taken from General File. Placed on General File for next legislative day.	
Apr 17, 2017	Read third time. Passed. Title approved. (Yeas: 21, Nays: None.) To Assembly.	137

Apr 18, 2017	In Assembly. Read first time. Referred to Committee on Legislative Operations and Elections. To committee.
May 26, 2017	From committee: Amend, and do pass as amended. Declared an emergency measure under the Constitution. Read third time. Amended. (Amend. No. 894.) Dispensed with reprinting. Read third time. Passed, as amended. Title approved. (Yeas: 41, Nays: None, Excused: 1.) To printer.
May 29, 2017	From printer. To engrossment. Engrossed. First reprint. To Senate. In Senate.
May 31, 2017	Assembly Amendment No. 894 not concurred in. To Assembly. In Assembly.
Jun 03, 2017	Assembly Amendment No. 894 not receded from. Conference requested. Conference Committee appointed by Assembly. To Senate.
Jun 04, 2017	In Senate. Conference Committee appointed by Senate. To committee.
Jun 05, 2017	From committee: Recede from Assembly Amendment No. 894. Conference report adopted by Senate. Conference report adopted by Assembly. To printer.
Jun 06, 2017	From printer. To re-engrossment. Re-engrossed. Second reprint. To enrollment.
Jun 09, 2017	Enrolled and delivered to Secretary of State. File No. 47.
On 2018 Ballot.	



PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada Legislature

BILL SUMMARY
79th REGULAR SESSION
OF THE NEVADA LEGISLATURE

SENATE JOINT RESOLUTION NO. 17 (Enrolled)
OF THE 78TH SESSION
Relates to Victims' Rights

Summary

Senate Joint Resolution No. 17 of the 78th Legislative Session proposes to amend the *Nevada Constitution* by eliminating existing victims' rights provisions found in Article 1, Section 8, and replacing them with an expanded set of provisions in the form of a victims' bill of rights.

Effective Date

This measure was approved in identical form during the 2015 and 2017 Legislative Sessions. The measure will be submitted to the voters for final approval or disapproval at the 2018 General Election.

Background Information

The proposed new section of the *Nevada Constitution* is modeled after the victims' bill of rights set forth in the *California Constitution* as it was amended in 2008 by what is commonly referred to as Marsy's Law (Cal. Const. Art. 1, § 28). The rights to which a victim of crime would be entitled under the *Nevada Constitution* include the right:

- To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process;
- To be reasonably protected from the defendant and persons acting on behalf of the defendant;
- To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant;

- To prevent the disclosure of confidential information or records to the defendant, which could be used to locate or harass the victim or the victim's family;
- To refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents;
- To reasonably confer with the prosecuting agency, upon request, regarding the case;
- To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings;
- To be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing, and at any parole proceeding;
- To the timely disposition of the case following the arrest of the defendant;
- To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant;
- To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody;
- To full and timely restitution;
- To the prompt return of legal property when no longer needed as evidence;
- To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender;
- To have the safety of the victim, the victim's family, and the general public considered before any parole or other postjudgment release decision is made;
- To have all monetary payments, money, and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim; and
- To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.

S.J.R. 17 of the 78th Session

SENATE JOINT RESOLUTION NO. 17 OF THE 78TH SESSION—
SENATORS ROBERSON, HARRIS, FARLEY; HARDY AND
SETTELMAYER

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Proposes to amend the Nevada Constitution to
expand the rights guaranteed to victims of crime.
(BDR C-952)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada
Constitution to expand the rights guaranteed to victims of
crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

- 1 Under the Nevada Constitution, the Legislature is required to provide by law
- 2 for certain rights of the victims of crimes, in particular, the right to be informed of
- 3 the status of criminal proceedings concerning those crimes, the right to be present
- 4 at public hearings concerning those crimes and the right to be heard at all
- 5 proceedings for the sentencing or release of persons convicted of those crimes.
- 6 (Nev. Const. Art. 1, § 8)
- 7 This resolution proposes to amend the Nevada Constitution to eliminate the
- 8 existing provisions of Article 1, section 8, concerning victims' rights and to add a
- 9 new section that sets forth an expanded list of such rights in the form of a victims'
- 10 bill of rights. The new section is modeled after the victims' bill of rights set forth in
- 11 the California Constitution as it was amended in 2008 by what is commonly
- 12 referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

- 1 RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF
- 2 NEVADA, JOINTLY, That a new section, designated Section 23, be
- 3 added to Article 1 of the Nevada Constitution to read as follows:

- 4 ***Sec. 23. 1. Each person who is the victim of a crime***
- 5 ***is entitled to the following rights:***



1 (a) *To be treated with fairness and respect for his or her*
2 *privacy and dignity, and to be free from intimidation,*
3 *harassment and abuse, throughout the criminal or juvenile*
4 *justice process.*

5 (b) *To be reasonably protected from the defendant and*
6 *persons acting on behalf of the defendant.*

7 (c) *To have the safety of the victim and the victim's*
8 *family considered as a factor in fixing the amount of bail*
9 *and release conditions for the defendant.*

10 (d) *To prevent the disclosure of confidential information*
11 *or records to the defendant which could be used to locate or*
12 *harass the victim or the victim's family.*

13 (e) *To refuse an interview or deposition request, unless*
14 *under court order, and to set reasonable conditions on the*
15 *conduct of any such interview to which the victim consents.*

16 (f) *To reasonably confer with the prosecuting agency,*
17 *upon request, regarding the case.*

18 (g) *To reasonable notice of all public proceedings,*
19 *including delinquency proceedings, upon request, at which*
20 *the defendant and the prosecutor are entitled to be present*
21 *and of all parole or other postconviction release*
22 *proceedings, and to be present at all such proceedings.*

23 (h) *To be reasonably heard, upon request, at any public*
24 *proceeding, including any delinquency proceeding, in any*
25 *court involving release or sentencing, and at any parole*
26 *proceeding.*

27 (i) *To the timely disposition of the case following the*
28 *arrest of the defendant.*

29 (j) *To provide information to any public officer or*
30 *employee conducting a presentence investigation*
31 *concerning the impact of the offense on the victim and the*
32 *victim's family and any sentencing recommendations before*
33 *the sentencing of the defendant.*

34 (k) *To be informed, upon request, of the conviction,*
35 *sentence, place and time of incarceration, or other*
36 *disposition of the defendant, the scheduled release date of*
37 *the defendant and the release of or the escape by the*
38 *defendant from custody.*

39 (l) *To full and timely restitution.*

40 (m) *To the prompt return of legal property when no*
41 *longer needed as evidence.*

42 (n) *To be informed of all postconviction proceedings, to*
43 *participate and provide information to the parole authority*
44 *to be considered before the parole of the offender and to be*



* S J R 1 7 7 8 *

1 notified, upon request, of the parole or other release of the
2 offender.

3 (o) To have the safety of the victim, the victim's family
4 and the general public considered before any parole or
5 other postjudgment release decision is made.

6 (p) To have all monetary payments, money and property
7 collected from any person who has been ordered to make
8 restitution be first applied to pay the amounts ordered as
9 restitution to the victim.

10 (q) To be specifically informed of the rights enumerated
11 in this section, and to have information concerning those
12 rights be made available to the general public.

13 2. A victim has standing to assert the rights
14 enumerated in this section in any court with jurisdiction
15 over the case. The court shall promptly rule on a victim's
16 request. A defendant does not have standing to assert the
17 rights of his or her victim. This section does not alter the
18 powers, duties or responsibilities of a prosecuting attorney.
19 A victim does not have the status of a party in a criminal
20 proceeding.

21 3. Except as otherwise provided in subsection 4, no
22 person may maintain an action against this State or any
23 public officer or employee for damages or injunctive,
24 declaratory or other legal or equitable relief on behalf of a
25 victim of a crime as a result of a violation of this section or
26 any statute enacted by the Legislature pursuant thereto. No
27 such violation authorizes setting aside a conviction.

28 4. A person may maintain an action to compel a public
29 officer or employee to carry out any duty required by this
30 section or any statute enacted by the Legislature pursuant
31 thereto.

32 5. The granting of these rights to victims must not be
33 construed to deny or disparage other rights possessed by
34 victims. A parole authority shall extend the right to be heard
35 at a parole hearing to any person harmed by the offender.

36 6. The Legislature shall by law provide any other
37 measure necessary or useful to secure to victims of crime
38 the benefit of the rights set forth in this section.

39 7. As used in this section, "victim" means any person
40 directly and proximately harmed by the commission of a
41 criminal offense under any law of this State. If the victim is
42 less than 18 years of age, incompetent, incapacitated or
43 deceased, the term includes the legal guardian of the victim
44 or a representative of the victim's estate, member of the
45 victim's family or any other person who is appointed by the



* S J R 1 7 7 8 *

court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.

And be it further

RESOLVED, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

~~2. {The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~5.†~~ No person shall be deprived of life, liberty, or property, without due process of law.



1 ~~16.1~~ 3. Private property shall not be taken for public use
2 without just compensation having been first made, or secured,
3 except in cases of war, riot, fire, or great public peril, in
4 which case compensation shall be afterward made.

③⑩



NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE FIRST DAY

CARSON CITY (Monday), February 6, 2017

Senate called to order at 12:09 p.m.

President Hutchison presiding.

President Hutchison requested that his remarks be entered into the Journal.

It is good to see all of you Senators here ready for action and another Session that will be productive and historic. It is even better to see your families here with you along those who have supported you and make it possible for you to be here in your capacity as representatives of the great citizens on Nevada.

Prayer by the Chaplain, Dr. Robert E. Fowler, Sr.

Eternal God and Heavenly Father, today, as in all days, we give praise to You, and to who You are. We thank You for the beautiful State that we live in and the colorful way You have arrayed its land and people. We are blessed by You to have the privilege of dwelling in a State with members of government who appreciate the high responsibility that You have allowed to be assigned to their hands.

The responsibilities are as diverse as the people of this great State. Bringing about both peace and prosperity in our State of varied people and issues is a task that requires that our leaders listen to the people and listen carefully to You. Today, I pray that You would grant them the strategies needed that would cause us to excel among our State and categorize us as a people blessed among the Nations we are surrounded by.

I pray that You would grant them the strength to withstand the enemies of governing for peace and prosperity for all people. Shore them up as warriors who have been trained for battle and are willing to make the right sacrifices for the battles of the people of this State. After You have given them strategies and strength, grant them stamina for both the short and the long battles that will be fought on your behalf and the behalf of the people of Nevada. Give special blessings to their families who they leave for State responsibility, give them peace; and cover them with protection from on high.

May every vote that is vocalized and every vote that is expressed by the lifting up of a hand become a brick in heaven that builds a great and honorable foundation for Nevada to build an exemplary State and an incredible cast of people committed to the common good of all.

AMEN.

REMARKS FROM THE FLOOR

PRESIDENT HUTCHISON:

We are delighted to have the Sparks High School Army Junior ROTC Honor Guard with us today. The team members for our Honor Guard are: Cadet Captain Cici Po'oi, Cadet Sergeant Adriana Toth, Cadet Sergeant Estefani Sanchez, Cadet Sergeant Soledad Palomar.

Presentation of the Colors by the Sparks High School Army Junior ROTC Honor Guard.

By Senators Settlemeyer, Gustavson and Goicoechea:

Senate Joint Resolution No. 13 of the 78th Session—Proposing to amend the Nevada Constitution to limit the total amount of certain property taxes that may be levied on real property.

Senator Ratti moved that the resolution be referred to the Committee on Revenue and Economic Development.

Motion carried.

By Senators Roberson, Harris, Farley, Hardy and Settlemeyer:

Senate Joint Resolution No. 17 of the 78th Session—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

Senator Segerblom moved that the resolution be referred to the Committee on Judiciary.

Motion carried.

Senator Ford moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 2:31 p.m.

SENATE IN SESSION

At 2:32 p.m.

Mr. President Hutchison presiding.

Quorum present.

INTRODUCTION, FIRST READING AND REFERENCE

By Senator Manendo:

Senate Bill No. 2—AN ACT relating to the protection of children; revising provisions relating to the voluntary surrender of a newborn child to a provider of emergency services; revising provisions relating to the transfer of certain identifying information relating to parents of such children; and providing other matters properly relating thereto.

Senator Atkinson moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

By the Committee on Finance:

Senate Bill No. 3—AN ACT relating to education; revising provisions governing participation by public schools in the Breakfast After the Bell Program that provides breakfast to certain pupils; and providing other matters properly relating thereto.

Senator Atkinson moved that the bill be referred to the Committee on Finance.

Motion carried.

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Ninth Session
February 7, 2017**

The Committee on Legislative Operations and Elections was called to order by Chairwoman Olivia Diaz at 1:35 p.m. on Tuesday, February 7, 2017, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Olivia Diaz, Chairwoman
Assemblyman Nelson Araujo, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Skip Daly
Assemblyman John Hambrick
Assemblyman Ira Hansen
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman James Ohrenschall
Assemblyman James Oscarson

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Carol Stonefield, Committee Policy Analyst
Kevin Powers, Committee Counsel
Julianne King, Committee Secretary
Gina Hall, Committee Secretary
Terry Horgan, Committee Secretary
Melissa Loomis, Committee Assistant

Minutes ID: 79



During hearings, members of the Committee should give their full attention to the people testifying. It is hard nowadays because most of us do our business by looking at information and following exhibits on the laptop, but let us try to give our due deference and respect to the people who are here before us.

Lastly, lobbyists and members of the public shall not be permitted on the dais before, during, or after meetings. If you need to speak to one of us, we will go away from the dais to have those side conversations. Are there any questions from the Committee members about the policies? [There were none.] I do not see any comments or questions so I am ready for a motion.

ASSEMBLYMAN DALY MADE A MOTION FOR ADOPTION OF THE
ASSEMBLY LEGISLATIVE OPERATIONS AND ELECTIONS
COMMITTEE POLICIES.

ASSEMBLYMAN ARAUJO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Diaz:

Next we will have our committee policy analyst, Carol Stonefield, present the Committee Brief of the Assembly Committee on Legislative Operations and Elections (Exhibit D) and an overview of the work we will likely encounter in the Committee this session.

Carol Stonefield, Committee Policy Analyst:

Our purpose is to give you some background information on what this Committee has done in the past, and what you can expect to consider for legislation during this session. In past sessions, the Committee has been referred measures that address elections and related issues. These include the Nevada Legislature itself and its operations including proposed interim studies, ethics in government, and constitutional amendments, including both those proposed to amend the *United States Constitution* as well as the *Nevada Constitution*.

On page 2 of the brief (Exhibit D), you can see the summary of the legislation that was considered by this Committee in 2015. There were 61 measures. Of the 45 bills, 20 were ultimately passed by both houses and reported to the Governor. Of the 16 resolutions, 10 were filed with the Secretary of State. There were no vetoes on legislation from this Committee in 2015. There were also three joint resolutions that this Committee considered that proposed to amend the *Nevada Constitution*. They are listed for you on page 3 (Exhibit D). If these resolutions pass again in this session, they will be on the 2018 general election ballot. Assembly Joint Resolution 8 of the 78th Session relates to requiring a vote of two-thirds of the people on any ballot question that would increase revenue through a tax, fee, assessment, or rate. Assembly Joint Resolution 10 of the 78th Session proposes the creation of a Citizens' Commission on Compensation for Certain Elected Officers.

Senate Joint Resolution 17 of the 78th Session will start in the Senate, and if it passes there, it will probably be considered by this Committee.

The other topics that were considered in the 2015 Legislative Session include election procedures, sample ballots, campaign and expense reporting, and the nominating process. On the topic of legislative operations, Assembly Bill 273 of the 78th Session addressed what is commonly known as the revolving door concept and reporting from lobbyists and legislators. This Committee also gets internal legislative business, and Assembly Bill 495 of the 78th Session related to the bill drafting process.

On page 4 (Exhibit D), you can see the bills that have been referred to this Committee already in 2017. This morning, Assembly Bill 104 was referred, so this list is already outdated. In addition to other issues you are likely to hear, perhaps not in this Committee because it might go to the Assembly Committee on Ways and Means, is legislation relating to the aging election equipment and its financing. We might also consider a presidential preference primary. That was another issue that was important in the 2015 Legislature, along with voter identification (ID) and candidate residency requirements.

On page 5 (Exhibit D), I have listed three policy and program reports that were prepared by the Research Division of the Legislative Counsel Bureau. One relates to elections, another to ethics, and the third one to the Legislature itself. Yesterday we adopted the 120-day calendar. I should note for you that the attached calendar is not the one that was modified by the Legislature yesterday. The important date for you to remember in this Committee is April 14. It is the deadline for committee passage from the first house. Any bill or resolution that is not passed out of committee by April 14 can no longer have any action taken on it.

One of the most useful parts of this brief starts on page 6 (Exhibit D). It is a list of contacts. You have the contact information for the Secretary of State and the Deputy Secretary for Elections from the Office of the Secretary of State. On pages 6 and 7 is the contact information for the county clerks and registrars of voters. At some point during the session, you will need to contact someone, and this will serve as a handy directory for you.

On page 8 (Exhibit D) are the members of the Commission on Ethics. You will note that there is one vacancy. It is a legislative appointment. Unless there are any questions, that is all I have.

Chairwoman Diaz:

Are there any questions or comments from the Committee members? [There were none.] The Secretary of State serves as the Chief Officer of Elections for Nevada. It is my distinct pleasure to invite Secretary of State Cegavske and her staff who are here today to the table to provide us with an overview of how the operations of elections work out of her office.

COMMITTEE BRIEF

ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

February 7, 2017



79th Legislative Session

Prepared by:
Carol M. Stonefield
Committee Policy Analyst
Research Division
Legislative Counsel Bureau

Assembly Committee: Legislative Operations and Elections
Exhibit: D Page 1 of 11 Date: 02/07/2017
Submitted by: Carol Stonefield

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Attachment

120-Day Calendar

COMMITTEE BRIEF

ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

79th SESSION OF THE NEVADA LEGISLATURE

Prepared by
Carol M. Stonefield, Committee Policy Analyst
Research Division, Legislative Counsel Bureau

February 7, 2017

I. INTRODUCTION

During the 2017 Legislative Session, the Assembly Committee on Legislative Operations and Elections will consider numerous bills and resolutions on topics related primarily to elections, ethics, and legislative business. This Committee Brief discusses bill statistics, highlights topics expected to be heard in this Committee during the next several months, and provides contact information for key government officials and county election officials.

Staff services for the Assembly Committee on Legislative Operations and Elections during the 79th Legislative Session are provided by the following individuals:

Carol M. Stonefield, Chief Principal Research Analyst and Committee Policy Analyst, Research Division, Legislative Counsel Bureau (LCB)
Brenda Erdoes, Legislative Counsel, Legal Division, LCB
Kevin C. Powers, Chief Litigation Counsel and Committee Counsel, Legal Division, LCB
Sylvia Dominguez-Curry, Committee Manager
Julianne King, Committee Secretary

Additional assistance is provided by Gayle Nadeau, Senior Research Secretary, Research Division, LCB.

II. JURISDICTION OF THE COMMITTEE

While final authority concerning the referral of bills rests with Assembly leadership, in past sessions the Committee has been referred measures addressing the following subjects:

- Elections
- Initiative and Referendum Petitions
- Campaign Practices
- Nevada Legislature
- Commission on Uniform State Laws
- Statutory Revision
- Ethics in Government
- Constitutional Amendments
- Reapportionment and Redistricting (every ten years)

The Assembly Committee on Legislative Operations and Elections will also consider legislative business, including measures proposing interim studies and those bills amending permanent statutory committees.

Bills with significant fiscal impacts may be concurrently referred to this Committee and then to the Assembly Committee on Ways and Means. Although the Senate and the Assembly Committees on Legislative Operations and Elections are referred many of the same measures, their jurisdictions are not always identical.

Because many of the Committee's bills propose interim studies or relate to legislative matters, they are exempt from the deadlines. For that reason, the Committees on Legislative Operations and Elections are typically busier after the deadline for second house committee passage than other committees.

III. 2015 SESSION—ACTIVITIES OF THE ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

The Assembly Committee on Legislative Operations and Elections in 2015 received a total of 61 measures for consideration. Of the 45 bills, 20 were ultimately passed by both houses of the Legislature and reported to the Governor. Of the 16 resolutions, 10 were filed with the Secretary of State.

Measures Referred to Committee

Type of Measure	Number Considered	Number Voted Out of Committee	Number Adopted or Reported to Governor
Assembly Bills and Resolutions	38	28	16
Senate Bills and Resolutions	23	20	14
Total	61	48	30

The *Summary of Legislation 2015* provides summaries of the measures passed in the session and is available from the LCB's Publications Office at (775) 684-6835 and is posted online at: <http://www.leg.state.nv.us/Division/Research/Publications/SoL/index.cfm>.

IV. MAJOR ISSUES

SELECTED MEASURES CONSIDERED IN THE 2015 SESSION — Some of the significant bills reported out of the Committee include:

CONSTITUTIONAL AMENDMENTS

Three joint resolutions to amend the *Nevada Constitution* were approved by the Legislature in 2015 and have been returned to the 2017 Session. If they are passed by the Legislature in identical form this session, they will be placed on the 2018 General Election ballot. These resolutions include:

- **Assembly Joint Resolution No. 8** proposes to require that any ballot questions, originating from an initiative petition, that would increase revenue through a tax, fee, assessment, or rate would have to pass by a two-thirds vote of the people.
- **Assembly Joint Resolution No. 10** proposes to create the Citizens' Commission on Compensation for Certain Elected Officers, which would be empowered to set salaries and benefits for legislators, constitutional officers, justices and judges, and certain elected county officers.
- **Senate Joint Resolution No. 17** proposes to expand the rights of victims of crime as set out in the *Nevada Constitution*.

ELECTIONS AND CAMPAIGNS

- **Assembly Bill 462** was proposed by the county clerks and registrars of voters. It modernizes certain election procedures, including providing for the use of signature pads when electronic pollbooks are implemented. It also deleted the requirement that the county clerk publish the full text of a statewide measure in a newspaper of general circulation.
- **Assembly Bill 94** permits county and city election officials to distribute sample ballots electronically.
- **Assembly Bill 23** and **Assembly Bill 63** enact revisions to strengthen campaign contribution and expense reporting. Assembly Bill 23 also changed the date of certain general city elections to the second Tuesday after the first Monday in June.
- **Senate Bill 293** requires certain candidates for political office to dispose of contributions that have not been spent or committed within a certain period if they do not file in a subsequent election.
- **Senate Bill 5** and **Senate Bill 499** change the manner in which candidates are nominated for placement on the general election ballot. Senate Bill 5 provides that the nonpartisan candidate for any office, except a judicial office, can be declared the winner at the primary election, if he or she receives a majority of the vote (commonly referred to as the 50 plus 1 provision). Senate Bill 499 provides that, if a major political party has two or more candidates for a particular office, the person who receives the highest number of votes at the primary election must be declared the nominee to the general election.

LEGISLATIVE OPERATIONS

- **Assembly Bill 273** provides that when a legislator leaves office in November, the legislator is prohibited from lobbying in the next legislative session.
- **Senate Bill 307** revises the financial information that both lobbyists and legislators must report. These include expenditures for educational or informational meetings.
- **Assembly Bill 495** is a housekeeping bill relating to bill draft requests. It provides that legislators must provide sufficient details for drafting the request. It also enacts revisions to requirements for prefiling measures.

Other issues considered by the Committee included a presidential preference primary, voter ID, and candidate residency requirements.

ANTICIPATED TOPICS IN THE 2017 SESSION

PREFILED BILLS: The following bills were prefiled and referred to the respective Committees on Legislative Operations and Elections:

Measure	Subject
A.B. 21	Relates to candidacy including residency, finances, and challenges
A.B. 45	Relates to voter registration, campaign finance, petition drives
A.J.R. 1	Proposes to amend the <i>Nevada Constitution</i> to prohibit the Legislature from decreasing the amount of gross revenue exempted from the commerce tax unless approve by voters
A.J.R. 2	Proposes to amend the <i>Nevada Constitution</i> to require the recognition of all marriages regardless of gender
I.P. 1	Revises provisions relating to voter registration.
S.B. 30	Relates to the Nevada Ethics in Government Law, including solicitation or acceptance of gifts by the Attorney General
S.B. 36	Relates to the Commission on Ethics
S.B. 72	Relates to the Merit Award Program
S.B. 84	Relates to the Commission on Ethics
S.B. 93	Relates to city elections, including casting ballots by mail
S.B. 94	Relates to voter registration, including preregistration by 17-year-olds
S.B. 100	Relates to voter identification.

A list of bill draft requests (BDR), that may be referred to the Senate or Assembly Committees on Legislative Operations and Elections, is available upon request.

In addition, election equipment and a presidential preference primary are likely to be considered by the Legislature in the 2017 Session.

INITIATIVE PETITION: The Automatic Voter Registration Initiative achieved the necessary number of signatures and has been forwarded to the Legislature, which has 40 days from receipt of the initiative to act upon it.

IV. RELEVANT RESEARCH DIVISION PUBLICATIONS

The Research Division prepares Research Briefs on current “hot” topics and Policy and Program Reports on all major policy areas. These publications are available online at: <http://www.leg.state.nv.us/Division/Research/Publications/index.html>. The following publications relate to topics within the Committee’s jurisdiction:

2016 Policy and Program Reports:

- **Elections:**
<http://www.leg.state.nv.us/Division/Research/Publications/PandPReport/12-E.pdf>
- **Ethics in Government and Whistle-Blower Laws:**
<http://www.leg.state.nv.us/Division/Research/Publications/PandPReport/17-EGWB.pdf>
- **The Legislature:**
<http://www.leg.state.nv.us/Division/Research/Publications/PandPReport/14-L.pdf>

V. SCHEDULE FOR IMPLEMENTATION OF THE 120-DAY SESSION

From 1961 through 1997, no limits existed on the length of legislative sessions, and between 1989 and 1997, all regular sessions of the Nevada Legislature exceeded 160 calendar days. Events such as protracted committee and floor debates, the holding of certain bills in committee, and the need to suspend the rules near the end of each session in order to complete remaining business, highlighted the impact of open-ended sessions.

In order to address this issue, the 1995 and 1997 Sessions approved a proposed amendment to the *Nevada Constitution* (Senate Joint Resolution No. 3 of the 68th Session) that limited legislative sessions to 120 calendar days, starting in 1999. In addition, the Governor is required to submit to the Legislature the proposed *Executive Budget* no later than 14 days before the convening of session on the first Monday in February in each odd-numbered year. At the 1998 General Election, 70.6 percent of Nevada's voters approved this measure.

The table below summarizes the schedule imposed by the *Constitution of the State of Nevada*, the *Nevada Revised Statutes*, and the joint rules regarding the 120-day Legislative Session:

<i>Date</i>	<i>Action Required</i>
February 6	Beginning of Session
February 13	Deadline for legislators to submit Bill Draft Requests (BDRs)
February 20	Deadline for committees of the Legislature to submit BDRs
March 20	Deadline for legislators to introduce BDRs
March 27	Deadline for committees to introduce BDRs
April 14	Deadline for committee passage of bills from the first house
April 25	Deadline for passage of bills from the first house
May 19	Deadline for committee passage of bills from the second house
May 26	Deadline for passage of bills from the second house
May 31	Deadline for committee passage of exempt bills
June 5	End of Session

A complete 120-day legislative calendar is attached to this report. Prior to the April 14 deadline for passage of bills out of the committee of reference in the house of origin, the Assembly Committee on Legislative Operations and Elections will have about 20 regularly scheduled meetings.

VI. KEY ELECTION OFFICIALS IN NEVADA

Many elected officials and other individuals are involved in the daily administration of election-related activities at the State and county level in Nevada. Listed below are the primary people responsible for election administration in this State:

BARBARA K. CEGAUSKE

Secretary of State
101 North Carson Street, Suite 3
Carson City, Nevada 89701-3714
Telephone: (775) 684-5709
E-mail: sosmail@sos.nv.gov
Legislative Contact: Scott Anderson
Telephone: (775) 684-5711
E-mail: scotta@sos.nv.gov
Website: <http://nvsos.gov/>

SUE MERRIWETHER

Carson City Clerk-Recorder
885 East Musser Street, Suite 1025
Carson City, Nevada 89701-4475
(775) 887-2087 FAX (775) 887-2146
E-mail: elections@carson.org
Website: www.carson.org

JOE P. GLORIA

Clark County Registrar of Voters
965 Trade Drive, Suite A
North Las Vegas, Nevada 89030-7802
(702) 455-8683 FAX (702) 455-2793
E-mail: jpg@clarkcountynv.gov
Website: www.clarkcountynv.gov

CAROL FOSMO

Elko County Clerk
550 Court Street, 3rd Floor
Elko, Nevada 89801-3518
(775) 753-4600, Ext 326 FAX (775) 753-4610
E-mail: cfosmo@elkocountynv.net
Website: www.elkocountynv.net

WAYNE THORLEY

Deputy Secretary for Elections
101 North Carson Street, Suite 3
Carson City, Nevada 89701-3714
(775) 684-5705 FAX (775) 684-5718
E-mail: nvelect@sos.nv.gov
Website: www.nvsos.gov

KELLY G. HELTON

Churchill County Clerk
155 North Taylor Street, Suite 110
Fallon, Nevada 89406-2748
(775) 423-6028 FAX (775) 423-7069
E-mail: khelton@churchillcounty.org
E-mail: clerktreas@churchillcounty.org
Website: www.churchillcounty.org

KATHY LEWIS

Douglas County Clerk
1616 8th Street, 2nd Floor
P.O. Box 218
Minden, Nevada 89423-0218
(775) 782-9014 FAX (775) 782-9016
E-mail: kewis@douglasnv.us
Legislative Contact: Dena Abeyta, Chief Deputy
Election Administrator
(775) 780-9023
E-mail: dabeyta@douglasnv.us
E-mail: election@co.douglas.nv.us
Website: www.cltr.co.douglas.nv.us

LACINDA "CINDY" ELGAN

Esmeralda County Clerk
233 Crook Avenue
P.O. Box 547
Goldfield, Nevada 89013-0547
(775) 485-6367 FAX (775) 485-6376
E-mail: celgan@citlink.net
Website: www.accessesmeralda.com

BEVERLY CONLEY**Eureka County Clerk**

10 South Main Street — P.O. Box 677
Eureka, Nevada 89316-0677
(775) 237-5262 FAX (775) 237-6015
E-mail: bconley@eurekacountynv.gov
Website: www.co.eureka.nv.us

SADIE SULLIVAN**Lander County Clerk**

50 State Route 305
Battle Mountain, Nevada 89820-9998
(775) 635-5738 FAX (775) 635-0394
E-mail: landercountyclerk@gmail.com
Website: www.landercountynv.org

NIKKI A. BRYAN**Lyon County Clerk**

27 South Main Street
Yerington, Nevada 89447-2571
(775) 463-6501 FAX (775) 463-5305
E-mail: nbryan@lyon-county.org
Website: www.lyon-county.org

SANDRA L. "SAM" MERLINO**Nye County Clerk**

101 Radar Road — P.O. Box 1031
Tonopah, Nevada 89049-1031
(775) 482-8127 FAX (775) 482-8133
E-mail: smerylino@co.nye.nv.us
Website: www.nyecounty.net

VANESSA STEPHENS**Storey County Clerk**

26 S. "B" Street
Drawer "D"
Virginia City, Nevada 89440-0139
(775) 847-0969 FAX (775) 847-0921
E-mail: clerk@storeycounty.org
Website: www.storeycounty.org

NICHOLE BALDWIN**White Pine County Clerk**

801 Clark Street, Suite 4
Ely, Nevada 89301-1994
(775) 293-6509 FAX (775) 289-2544
E-mail: wpclerk@mwpower.net
Website: www.whitepinecounty.net

TAMI RAE SPERO**Humboldt County Clerk**

50 West Fifth Street, Room 207
Winnemucca, Nevada 89445-3199
(775) 623-6343 FAX (775) 623-6309
E-mail: coclerk@hcnv.us
Website: www.hcnv.us

LISA C. LLOYD**Lincoln County Clerk**

181 North Main Street, Ste. 201 — P.O. Box 90
Pioche, Nevada 89043-0090
(775) 962-8077 FAX (775) 962-5180
E-mail: llloyd@lincolnnv.com
Website: www.lincolncountynv.org/

CHRISTOPHER NEPPER**Mineral County Clerk/Treasurer**

105 South "A" Street, Suite 1 — P.O. Box 1450
Hawthorne, Nevada 89415-0400
(775) 945-2446 FAX (775) 945-0706
E-mail: clerk-treasurer@mineralcountynv.org
Website: www.mineralcounty.nv.org

LACEY DONALDSON**Pershing County Clerk**

398 Main Street — P.O. Box 820
Lovelock, Nevada 89419-0820
(775) 273-2208 FAX (775) 273-3015
E-mail: ldonaldson@pershingcounty.net
Website: www.pershingcounty.net

LUANNE CUTLER**Washoe County Registrar
of Voters**

1001 E. Ninth Street, Room A135
Reno, Nevada 89512-2845
P.O. Box 11130
Reno, Nevada 89520-0027
(775) 328-3670 FAX (775) 328-3747
E-mail: electionsdepartment@washoecounty.us
Website: www.washoecounty.us

VII. NEVADA COMMISSION ON ETHICS

Following is a list of the members and staff of Nevada's Commission on Ethics, as well as contact information for the Commission:

Commission on Ethics
704 West Nye Lane, Suite 204
Carson City, Nevada 89703-1572
Telephone: (775) 687-5469
Fax: (775)-687-1279
E-mail: ncoe@ethics.nv.gov
Website: www.ethics.nv.gov

Cheryl A. Lau, Esq., Chair
Keith A. Weaver, Esq., Vice Chair
Barbara Gruenewald, Esq.
Brian Duffrin

Amanda Yen, Esq.
Lynn Stewart
Phillip "P.K". O'Neill
Vacant Position (Legislative Appointment)

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

VIII. CONCLUDING REMARKS

The mission of the Research Division is to serve the Nevada Legislature and its standing and interim committees—in a professional and nonpartisan manner—by providing policy analysis and research, assistance to constituents, and information to the public. The Research Division is available to provide the Committee and its members with assistance on any issue related to matters before the Committee.

In addition, the Research Division provides individual members of the Legislature with information and assistance, on a confidential basis, on any topic. The Research Division is located on the first floor of the Sedway Office Building (telephone: 775/684-6825) and also maintains an office in Room 1122 of the Legislative Building. Please do not hesitate to ask us for assistance.



STATE OF NEVADA

2017 LEGISLATIVE SESSION

120-Day Calendar

<i>Date (Day of Session)</i>	<i>Date (Day of Session)</i>	<i>Date (Day of Session)</i>
Feb. 6 (1) Legislators' Profile or Withdraw BDRs*	Mar. 18 (41)	Apr. 27 (81)
Feb. 7 (2)	Mar. 19 (42)	Apr. 28 (82)
Feb. 8 (3)	Mar. 20 (43) Legislators' Bill Introductions	Apr. 29 (83)
Feb. 9 (4)	Mar. 21 (44)	Apr. 30 (84)
Feb. 10 (5) <i>Joint Subcommittees Start</i>	Mar. 22 (45)	May 1 (85) <i>Economic Forum Report Due</i>
Feb. 11 (6)	Mar. 23 (46)	May 2 (86)
Feb. 12 (7)	Mar. 24 (47)	May 3 (87)
Feb. 13 (8) Legislators' BDR Requests	Mar. 25 (48)	May 4 (88)
Feb. 14 (9)	Mar. 26 (49)	May 5 (89) <i>Start Resolving Budget Differences</i>
Feb. 15 (10)	Mar. 27 (50) Committees' Bill Introductions	May 6 (90)
Feb. 16 (11)	Mar. 28 (51)	May 7 (91)
Feb. 17 (12)	Mar. 29 (52)	May 8 (92)
Feb. 18 (13)	Mar. 30 (53)	May 9 (93)
Feb. 19 (14)	Mar. 31 (54)	May 10 (94)
Feb. 20 (15) Committees' BDR Requests	Apr. 1 (55)	May 11 (95)
Feb. 21 (16)	Apr. 2 (56)	May 12 (96)
Feb. 22 (17)	Apr. 3 (57)	May 13 (97)
Feb. 23 (18)	Apr. 4 (58) <i>Start Closing Budgets</i>	May 14 (98)
Feb. 24 (19)	Apr. 5 (59)	May 15 (99)
Feb. 25 (20)	Apr. 6 (60)	May 16 (100)
Feb. 26 (21)	Apr. 7 (61)	May 17 (101)
Feb. 27 (22)	Apr. 8 (62)	May 18 (102)
Feb. 28 (23)	Apr. 9 (63)	May 19 (103) Committee Passage (Second House)
Mar. 1 (24)	Apr. 10 (64)	May 20 (104)
Mar. 2 (25)	Apr. 11 (65)	May 21 (105)
Mar. 3 (26)	Apr. 12 (66)	May 22 (106)
Mar. 4 (27)	Apr. 13 (67)	May 23 (107)
Mar. 5 (28)	Apr. 14 (68) Committee Passage (First House)	May 24 (108)
Mar. 6 (29)	Apr. 15 (69)	May 25 (109) <i>Finish Budget Differences</i>
Mar. 7 (30)	Apr. 16 (70)	May 26 (110) Second House Passage
Mar. 8 (31)	Apr. 17 (71)	May 27 (111)
Mar. 9 (32)	Apr. 18 (72)	May 28 (112)
Mar. 10 (33)	Apr. 19 (73)	May 29 (113)
Mar. 11 (34)	Apr. 20 (74)	May 30 (114)
Mar. 12 (35)	Apr. 21 (75)	May 31 (115) <i>Budget Bills Introduced Exempt Bills from Committee</i>
Mar. 13 (36)	Apr. 22 (76)	June 1 (116)
Mar. 14 (37)	Apr. 23 (77)	June 2 (117)
Mar. 15 (38)	Apr. 24 (78)	June 3 (118)
Mar. 16 (39)	Apr. 25 (79) First House Passage	June 4 (119)
Mar. 17 (40)	Apr. 26 (80)	June 5 (120)

*Pursuant to subsection 2 of NRS 218D.150, a certain number of a Legislator's BDRs requested before the session convenes must be prefiled or withdrawn not later than the first day of the session.

Shaded days are Mondays — ***Bolded and italicized items are budget related deadlines.***

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-ninth Session
February 23, 2017**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:21 p.m. on Thursday, February 23, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Don Gustavson
Senator Michael Roberson
Senator Becky Harris

GUEST LEGISLATORS PRESENT:

Senator Patricia Farley, Senatorial District 8
Senator Heidi S. Gansert, Senatorial District 15
Senator Joyce Woodhouse, Senatorial District 5

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General
Jeffrey Segal, Bureau Chief, Bureau of Criminal Justice, Office of the Attorney General
John T. Jones, Jr., Nevada District Attorneys Association

you look at the type of conduct we were targeting, it is serious, harmful and often violent. That is why we believe Category B is appropriate.

Category B provides a range of potential penalties judges can consider at sentencing. At the low end, one to four years of prison is appropriate. In other cases, such as financing terrorist operations or operating violent sex-trafficking rings, judges need the discretion to impose stiffer penalties. With S.B. 68, we provide judges a sentencing range to address the underlying conduct being facilitated by money laundering.

CHAIR SEGERBLOM:

We will close the hearing on S.B. 68 and open the hearing on Senate Joint Resolution (S.J.R.) 17 of the 78th Session.

SENATE JOINT RESOLUTION 17 OF THE 78TH SESSION: Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

SENATOR MICHAEL ROBERSON (Senatorial District 20):

Senate Joint Resolution 17 of the 78th Session, also known as Marsy's Law, provides much-needed and long overdue enforceable constitutional rights to crime victims. Committee members are aware of constitutional provisions requiring laws to provide some rights to victims. Portions of NRS 178 set forth protections for victims and witnesses. However, more needs to be done out of respect for those who suffer from the effects of crime to ensure their voices are heard and needs recognized.

When crime victims have specific, enforceable constitutional rights, they are better served. Marsy's Law is named after Marsalee Ann Nicholas, a University of California, Santa Barbara, student who was stalked and killed by her ex-boyfriend in 1983. A week after the murder, her brother and mother were confronted by Marsy's accused killer in a grocery store. They did not know there had been a bail hearing and he was released. Marsy's killer was convicted of murder and spent the rest of his life in prison. The legal process into which her family was thrust left them feeling hurt and revictimized.

This story is typical of suffering by murder victims' families. Though well-meaning, courts and law enforcement had no legal obligation to keep the Nicholas family informed as to the killer's status. In 2014, Illinois passed

legislation similar to S.J.R. 17 of the 78th Session giving enforceable constitutional rights to victims. In 2016, North Dakota, South Dakota and Montana also passed them. Marsy's Law received broad bipartisan support and was subsequently passed overwhelmingly by voters.

In 2015, Legislators worked to make sure S.J.R. 17 of the 78th Session best served the State and its crime victims. The resolution is the product of months of bipartisan collaboration in the Senate and Assembly that included district attorneys, public defenders, judges and the law enforcement community. In order to qualify for the 2018 ballot, S.J.R. 17 of the 78th Session must pass out of this Session unamended.

Senate Joint Resolution 17 of the 78th Session will give victims the right to be treated with fairness and respect throughout the criminal justice process, reasonably protected from retribution by defendants and persons acting on their behalf, heard at critical stages of the trial and notified of their rights as victims.

WILLIAM C. HORNE (Marsy's Law for Nevada):

Marsy's Law is a nationwide, Nevada-based effort advocating for victims' rights. Individuals and 25 organizations representing advocates, labor organizations and business groups throughout the State (Exhibit G) support S.J.R. 17 of the 78th Session. While the legislative intent focuses on victims, we do not want to infringe on the constitutional rights of people accused or convicted of crimes. Rights of the accused are essential to the impartial operation of our justice system. Protection of victims is also essential to that system and its processes. We ask that Nevada voters be allowed to consider victims' protections in S.J.R. 17 of the 78th Session.

MEG GARVIN (Executive Director, National Crime Victims Law Institute):

I am a clinical professor of law at Lewis & Clark Law School in Portland, Oregon. I am a crime victims lawyer representing their rights in Oregon. In other jurisdictions, I cocounsel and offer guidance in state and federal courts. My background is ensuring the criminal justice system is clear and transparent for all impacted individuals. The notion of procedural justice is fundamental to Marsy's Law, the idea that the system should be fair and listen to victims and defendants harmed by crime, allegations of crime and the judicial process.

The Marsy's Law endeavor is relatively new, starting in 2008 when California attempted to amend its constitution. The effort to codify and put in

constitutions meaningful, enforceable victims' rights is a 35-plus-year endeavor. For decades, Arizona, Maryland and Colorado have allowed victims to have standing in criminal cases to assert and seek enforcement in remedies. Oregon likewise modified its constitution in 2008.

The idea of meaningful, enforceable rights at the constitutional level is not new in Nevada. Your constitutional language defers to statutory application but does not afford clarity of standing and enforcement. That is the difference between original and current iterations of criminal law.

The idea is criminal justice systems function best when individuals directly impacted by them have their voices meaningfully integrated and they perceive the process as fair and transparent. Decades of studies of defendants and victims found that when they do not perceive the system as transparent, they distrust it. Research makes clear when the system lacks procedural justice, victims experience secondary victimization. A way to minimize that is to provide meaningful, enforceable constitutional rights.

One of the elephants in the room is always, why should victims' rights be constitutional? Why not leave rights in statute or beef them up? We agree constitutional amendments should not be taken lightly. It is significant when a society elevates something to constitutional law. It should not be done to further partisan or short-term goals or for purely political objectives. When you talk about human or defendants' rights versus victims' rights, constitutional scholars do not dispute fundamental human rights should be in the highest level of law.

Constitutional amendments are appropriate when the goal involves a basic human right that by consensus deserves permanent respect and cannot be adequately protected through statute. Harvard Law School and Carl M. Loeb University Professor at Harvard University Laurence Tribe, one of our most prominent constitutional scholars, said about victims' rights,

There's a tendency to ignore or underenforce such statutory rights whenever they even appear to rub up against the rights of the criminally accused or the needs or wishes of prosecution. ... If there's a cultural moment at play with regard to constitutions versus statutes, the failure to provide meaningful protection over statutory rights happens whenever they come into conflict with

bureaucratic habit, traditional indifference, sheer inertia or the mere mention of an accused's rights, even when those rights are not generally threatened.

Victims' rights operate within the cultural reality of constitution versus statutes, and victims always end up with the short end of the stick. As James Madison and others recognized when crafting the Bill of Rights, "Constitutional rights impress a different degree of respect. They acquire the status of fundamental maxims of the community." This is why most community members know their rights as defendants. Those rights are enshrined in the U.S. Constitution and become part of our cultural maxim of how we operate in society.

When victims' rights are not elevated to that level, they do not change culture. If I asked most people if they know what their statutory victims' rights are, very few could articulate them. However, people recognize defendants' constitutional rights, even if they are just those in the Miranda warning, because they emanate from fundamental law. It is a cultural moment to say victims, who are the other individuals most impacted by criminal justice, should be included in fundamental law.

The second elephant in the room is, if we elevate victims' rights, do we minimize defendants' rights? Victims' rights are not about diminishing defendants' rights. This is about creating a system that constitutes community by acknowledging all voices of those impacted by crime, listening to them and adjudicating the best rules. The criminal justice system is not a zero-sum game that says if one party has a right, another loses one. It says all can have rights. The job of courts is to analyze them and figure out, in the moment, which rights must take priority. Often, and rightfully, those are defendants' rights.

If a victim prejudices something by the method of delivering a statement, defendants' rights will probably and rightfully prevail. However, should the court consider the victim's thoughts if he or she approaches it respectfully and contributes to the analysis? Yes. The justice system can entertain rights from numerous people and achieve a just end. In 2008, a Human Rights Watch report on U.S. victims' rights said, "While there can be tensions between legitimate interests of victims and defendants, a criminal justice system that is based on human rights standards can safeguard the rights of both while advancing justice and the rule of law."

Senate Joint Resolution 17 of the 78th Session includes four categories of rights: privacy rights for victims in section 23, subsection 1, paragraph (a), protection in section 23, subsection 1, paragraphs (b) through (e) and (k), (n) and (o), property rights, or restitution, in section 23, subsection 1, paragraphs (l) and (m), and participation in section 23, subsection 1, paragraphs (f) through (h) and (j). Across the Nation, we have seen that when victims are afforded privacy, protection, the ability to be heard and a return to some level of financial stability, they can operate in communities more effectively; communities are safer and victims participate more in criminal justice.

The other sections of S.J.R. 17 of the 78th Session afford explicit standing so victims can assert their own rights and receive some level of remedy. The resolution also offers explicit remedies, specifically prohibiting suing for damages for violating victims' rights. Victims can compel someone to afford them rights, but they cannot sue for damages.

Section 23, subsection 7 defines who is entitled to rights: " ... any person directly or proximately harmed by the commission of a criminal offense under any law of this State." While the language is broad, it is well tested through the federal Crime Victims' Rights Act of 2004 and in other states. It has been demonstrated to strike the proper balance of participation between those who are harmed and of those who are too far down the chain.

Section 23, subsection 1, paragraph (a) says a victim must " ... be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process." This overarching right draws on notions of due process. The term "fairness" has a well-established tradition in due process litigation as parties must be notified and part of process. The language of this section has been interpreted in federal and other jurisdictions and covers both adult and juvenile criminal processes.

SENATOR FORD:

How many states have added Marsy's Law to their constitutions?

MS. GARVIN:

California, Illinois, North Dakota, South Dakota and Montana added the law. A total of 36 states have constitutionalized victims' rights.

SENATOR FORD:

How many states have enacted the version of Marsy's Law that we are considering?

MS. GARVIN:

Senate Joint Resolution 17 of the 78th Session is unique to Nevada. Elements of it are identical to other states.

SENATOR FORD:

I appreciated your statement that the phrases "fairness" and "privacy" are based in constitutional jurisprudence. Why did not Nevada use constitutional phraseology not subject to multiple interpretations and that is more commonly understood? For example, it is called the "equal protection clause," not the "fairness protection clause." You characterized the resolution's terms as broad. Fairness and respect are sometimes in the eye of the beholder.

MS. GARVIN:

The language is relatively similar to that in several other states. The genesis of victims' constitutional rights was in the early 1980s. It was a grassroots effort including work done by the 1982 President's Task Force on Victims of Crime, members of which went around the Country listening to victims, prosecutors and defense attorneys about what is lacking in the criminal justice system. They asked victims, "How would you like to be treated?" The 1982 President's Task Force on Victims of Crime report contains language similar to S.J.R. 17 of the 78th Session concerning how the justice system should treat victims.

Section 23, subsection 1, paragraph (b) states, "To be reasonably protected from the defendant and persons acting on behalf of the defendant." This is identical to the Crime Victims' Rights Act of 2004 and has been interpreted by federal courts with an emphasis on the word "reasonably," drawing from other laws that use the term. When the Crime Victims' Rights Act of 2004 was debated in Congress, there was a lot of discussion about this provision. When Senator Dianne Feinstein of California and Senator Jon Kyl of Arizona spoke on the floor of Congress, there was lot of discussion of what the provision meant. It means "reasonably limit." That does not mean a guard posted daily at a victim's door, but when it is reasonable, court determinations of the impact of protections must take into account what the victim wants for the perpetrator's release conditions. It also deals with protections on contacts with victims. If it is reasonable, courts need to integrate protection into rulings.

Section 23, subsection 1, paragraph (c) states, "To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant." This is done on a routine basis in many Nevada courts, but moving it to the constitutional level ensures every court must consider it. The key word is "consideration." This is not a mandate to deny bail, rather, safety must be considered when the amount of bail is fixed and release conditions established.

Section 23, subsection 1, paragraph (d) states, "To protect the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family." This is a protection right so victims can move through the justice system without having their records disclosed resulting in further victimization.

Section 23, subsection 1, paragraph (e) states, "To refuse an interview or deposition request ... and to set reasonable conditions on the conduct of any such interview to which the victim consents." This ensures victims are not subject to pretrial discovery, which they are not party to in the first instance. Discovery in a criminal case runs between the prosecution and defense, with the victim as an outsider. Under the U.S. Constitution, defendants do not have an affirmative right to seek discovery from victims. The provision elevates their right to refuse requests unless a court orders otherwise.

Section 23, subsection 1, paragraph (f) states, "To reasonably confer with the prosecuting agency, upon request, regarding the case." This ensures victims understand what is going on in their cases. Prosecutors know what is happening now and in the trajectory of cases. When cases impact victims, knowing what is coming down the pipe is important so they can be prepared from a trauma perspective and know if their downstream rights may be impacted.

Section 23, subsection 1, paragraph (g) states, "To reasonable notice of all public proceedings ... at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings." This is a due process right of notice right to be present. If the criminal conduct affects victims, they need to know what hearings are happening and to be present.

Section 23, subsection 1, paragraph (h) states, "To be reasonably heard ... at any public proceeding ... in any court involving release or sentencing, and at any

parole proceeding." There is a relevancy standard whereby victims do not get to be heard if they speak about something completely unrelated to the court proceedings. All courts have control over what issues they will hear.

SENATOR FORD:
Does that right currently exist in Nevada?

Ms. GARVIN:
It does not in this iteration.

SENATOR FORD:
Are you saying putting it in our Constitution will impute a relevancy standard to testimony?

Ms. GARVIN:
Yes, this is akin to if I testified to the Committee about a different bill not being heard. You could say I could not do that, just as a court would.

SENATOR CANNIZZARO:
In regards to paragraph (g) and its relation to paragraph (h), often in criminal practice, the majority of court appearances are for things like status checks. These occur on 30-plus-page court calendars that also deal with sentencing, probation revocation hearings and substantive motions. As a prosecutor, I interpret "reasonable notice of all public proceedings" as having to send notice of every status check. It does not say notices relevant to court proceedings that may affect victims; this is all public proceedings. How will S.J.R. 17 of the 78th Session limit that so attorneys are not inundated with paperwork advising victims of 15 different hearings that are not substantive or affect anyone's rights?

Ms. GARVIN:
The provisions are a broad right to notice of proceedings happening in cases. Victims may waive that right, or when prosecutors' victim advocates contact them, they often specify, "I want to be notified of critical stages." The majority of victims do not want to be present at status hearings. The language is broad because of incidents when status hearings reverted to plea hearings.

SENATOR CANNIZZARO:

I understand that courts always have control over their dockets. In criminal cases, it is a lot to be in the courtroom, so I understand why many victims would not want to come for a litany of status checks. However, some people want to be at every hearing, and this language indicates they would be permitted to express any opinions on whatever happens each day of the case. When we continually ask people to come to court, give statements and see defendants, that can result in revictimization when nothing substantive is happening. How do we balance that?

Ms. GARVIN:

The language is broad because of gaps when victims were not notified of substantive proceedings. The language parallels that in many other jurisdictions and has not caused prosecutors' offices to be overwhelmed.

Section 23, subsection 1, paragraph (i) states, "To the timely disposition of the case following the arrest of the defendant." This right encourages courts to move proceedings forward quickly. It does not conflict with defendants' right to speedy trials or with prosecution or defense teams' right to prepare for trials. In other jurisdictions, "timely disposition" has been interpreted as courts must look at requests for continuances or delays using a reasonableness standard: is it necessary to afford a defendant's constitutional right to a fair trial to grant the continuance? Yes. Should the victim's right to a fair trial be considered? Yes, that will always prevail.

SENATOR FORD:

Does that not conflict with the right to a speedy trial? What if Nevada courts interpret the provision differently? If someone who is on death row for 30 years is exonerated by a DNA test, how does the provision interact with that? I am not confident the language is broad enough to exclude that apparent conflict.

Ms. GARVIN:

The right in paragraph (i) is in the Crime Victims' Rights Act of 2004 and has been interpreted in federal habeas corpus cases and those involving the Innocence Project. When we talk about a defendant's right to fair trial and exhaust appeals, U.S. Constitution rights will necessarily prevail because of the hierarchy of law. However, if we are talking about a defendant's state right, which does not implicate federal constitutional law, the court would have to analyze how the two types of rights are weighed against each other. I have

never seen a court come down on a victim's right to a speedy trial and deny a substantive appellate moment for a defendant.

SENATOR FORD:

I know the speedy trial and proceedings notification rights will align. I was talking about the exhaustion of remedies.

MS. GARVIN:

Section 23, subsection 1, paragraph (k) states, "To be informed ... of the conviction, sentence, place and time of incarceration, or other disposition of the defendant and the release of or the escape by defendant from custody." This is the right to know the postconviction outcome of what happens to perpetrators. Section 23, subsection 1, paragraphs (l) and (m) state, "To full and timely restitution." This ensures the person does not carry the full financial burden of their victimization. "Full" means the total amount of loss, exclusive of pain and suffering, directly caused by the criminal conduct. "Timely" factors in a payment schedule are based on an analysis of the convicted person's ability to pay. This constitutional right simply affords the order for restitution. If defendants cannot pay, they cannot be forced to do so. There cannot be debtors' prisons in this Country.

Section 23, subsection 1, paragraph (n) states, "To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified ... of the parole or other release of the offender." Just because the trial is over, it is not over for the victim. The tail of criminal justice is long for defendants and victims.

SENATOR CANNIZZARO:

In postconviction work, it is common to see things like petitions for writ of habeas corpus for computation of time, motions to access materials in law libraries, additional copyright money or successive petitions that have been denied that, pursuant to NRS, courts must not deny or consider on their merits. There are many procedural time stops in the petition of writ of habeas corpus provision wherein the court is either hearing a summary motion to which a prosecutor's office is not a party or has no real standing. According to S.J.R. 17 of the 78th Session, postconviction proceedings would include all of the above motions, not just substantive, on-the-merits petitions for habeas corpus. The

resolution dictates a lot of notice requirements wherein the State is not party to the action.

Often in postconviction proceedings, defendants represent themselves. When counsel does not provide legal assistance, prosecutors get stacks and stacks of paperwork about postconviction proceedings about which they have had no notice. My concern is prosecutors are violating constitutional rights without ever having been informed of those processes.

Ms. GARVIN:

Some of these rights are cabined upon request. Some of them, however, are not. And this latter one is likely one that is not. However, victims can waive these rights. Many victims say, "I don't want it." With the State, there is no specific affirmative duty on who has to provide this notice. So if prosecutors are not affirmatively involved in the postconviction, it wouldn't fall to them. Prosecutors want to make sure victims get notice of things that they need or want without hurting them any further. There are no damages when prosecutors who do not notify victims are actually involved in the postconviction. The earlier rights did have "upon request," but this one is broad.

Victims sometimes do want to be involved in postconviction proceedings because the evolution of their harm changes. Sometimes victims downstream have different opinions about what should be happening with perpetrators. I work with the Innocence Project and downstream victims, and the provision ensures victims can be in the mix postconviction.

Section 23, subsection 1, paragraph (p) states, "To have all monetary payments, money and property collected from any person who has been ordered to make restitution to be first applied to pay the amounts ordered as restitution to the victim." This ensures victims do not carry the financial burden of their own victimization.

Section 23, subsection 1, paragraph (q) states, "To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public." United Nations Secretary General Boutros Boutros-Ghali said, "The first fundamental step in any rights moment is knowing your rights." You have to know you have rights in order to activate them. The substantive rights in S.J.R. 17 of the 78th Session are predominately procedural.

Section 23, subsection 2 involves standing to assert the enumerated rights in the case at issue. Courts must promptly rule on victims' requests, but defendants do not have standing to assert the rights of victims. Prosecutorial duties are addressed, which do not include making victims party to their cases.

Section 23, subsections 3 and 4 are interrelated. Subsection 3 outlines limitations on relief, and subsection 4 outlines what can affirmatively be done to seek remedies. "A person may maintain an action to compel a public officer or employee to carry out any duty required by this section ... " means a court could mandate that someone follow a law as a primary device. Subsection 3 limits requests "for damages or injunctive, declaratory and other equitable relief" This provision on victims' remedies is much more restrictive than most other states.

Section 23, subsection 5 states the resolution is not intended to deny other rights afforded to victims in other statutes. "A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender" ensures parole proceedings look broadly at harm, not just at the time for which they are considering relief.

SENATOR FORD:

In section 23, subsection 7, I am concerned about " any person directly or proximately harmed" We are not just talking about the victim or family members. Are we talking about a victim's best friend, distant cousin or a witness to the crime who is now traumatized? Explain what is contemplated in this context.

MS. GARVIN:

The broad notion of any person harmed is limited to the parole authority. The other rights are not implicated by this moment. The parole authority shall extend the right to be heard at a parole hearing to any person harmed. It is extremely broad. I do not know the specific history of this language in Nevada's resolution.

As an example, a serial rapist was convicted in Oregon. However, for one of his rapes, the statute of limitations had expired. That victim testified at the trial and participated all along. Parole came up, and the confessed serial rapist was being considered for release. The parole board considered prohibiting the victim from speaking to them, even though all throughout the trial and initial conviction she

was recognized as a nonprosecutable victim. As a result, Oregon adopted language to say the victim was clearly harmed by the perpetrator, just not by the crime of conviction. A parole board's chief consideration is safety in the community, so the victim had a right to be heard as long as her testimony was relevant.

SENATOR FORD:

"Any person" means any person. What you just described makes perfect sense: the victim should have been able to testify at the parole hearing. What about a bystander who does not know the victim or defendant, but claims to be mentally harmed? Who constitutes "any person" under this language? Would that person be allowed to speak at the parole hearing?

MS. GARVIN:

Yes, if the bystander can show causation. "Harmed by" means the harm was caused by the offender. It includes emotional harm.

SENATOR FORD:

What about a person who reads about the crime who becomes so distraught and harmed he or she wants to testify? I need to understand how far this extends.

SENATOR ROBERSON:

That would be at the discretion of the parole authority. If someone shows evidence of harm, the parole authority would have to determine the extent of harm and whether the person should be heard.

SENATOR FORD:

Senate Joint Resolution 17 of the 78th Session does not mention discretion or say, "The parole authority may" It says, "The parole authority shall"

SENATOR ROBERSON:

The parole authority has to determine if the person has been harmed.

SENATOR FORD:

Am I way off base in thinking someone could testify who was not harmed in the way we all contemplate it?

SENATOR ROBERSON:

It is up to the parole authority to determine if evidence given by someone constitutes "harmed." If so, the board shall allow testimony.

SENATOR FORD:

Would you agree if a person reads about a crime and becomes distraught, he or she should not be given the right to be heard at a parole hearing because he or she has not been harmed?

MS. GARVIN:

That person would not be heard. Section 23, subsection 6 involves the Legislature's duty to provide additional procedural moments that should be adopted to ensure the provisions move forward. Subsection 7 defines "victim," with a provision that underage, incompetent or incapacitated victims may have other people act on their behalf. "Directly and proximately harmed" is a term from criminal and tort law that has evolved since the Mandatory Victim Restitution Act of 1996. In the Crime Victims' Rights Act, "Directly and proximately harmed" is a common definition of "victim."

SENATOR FORD:

This is an example of why I am so concerned about phraseology. Every word has to have a separate meaning if it is different from others. "Victim" is defined. Subsection 5 talks about "The granting of these rights to victims ... ," but the next sentence talks about granting "the right to be heard at a parole hearing to any person harmed by the offender." That is more expansive than "victim" as defined in subsection 7. We need to be clear "any person" means any person, not just a victim. There must be a determination made and some limit placed on that provision to ensure it does not conflict with the constitutional rights of the accused, who sometimes end up being found innocent.

MR. PIRO:

You have my written testimony (Exhibit H) on behalf of the Clark County Office of the Public Defender opposing S.J.R. 17 of the 78th Session. A lot more needs to be discussed in another hearing concerning this resolution.

MS. WELBORN:

The ACLU opposes S.J.R. 17 of the 78th Session.

MR. SULLIVAN:

The Washoe County Office of the Public Defender opposes S.J.R. 17 of the 78th Session (Exhibit I).

SENATOR HARRIS:

Senators Patricia Farley, Joyce Woodhouse and I are issuing a newspaper opinion piece in support of Marsy's Law. In 2015, when this Committee heard S.J.R. 17 of the 78th Session, we worked with supporters to find the right language. Nevada has a unique version of Marsy's Law that is, in some ways, more restrictive than other states' versions. The Committee recognized that victims' rights need to be acknowledged as part of the criminal justice system. Sometimes victims are a silent part of the system, and they need to be recognized and be part of the process to further their healing.

SENATOR JOYCE WOODHOUSE (Senatorial District 5):

I support S.J.R. 17 of the 78th Session because victims have the inherent right to know the status of their cases through reasonable notice of public hearings and any other proceedings. When perpetrators are released back into the community, the resolution will help increase protection for victims and their freedom from harassment and intimidation. I cannot imagine victims' horror of being confronted or stalked by the person who victimized them in the first place.

SENATOR HEIDI S. GANSERT (Senatorial District 15):

I support S.J.R. 17 of the 78th Session. Victims need strong, equal rights.

MR. JONES:

The Nevada District Attorneys Association wholeheartedly supports S.J.R. 17 of the 78th Session. When it was introduced, we worked extensively with then-Chair Greg Brower and Senator Roberson on the resolution. We are comfortable with its language.

WES DUNCAN (First Assistant Attorney General, Office of the Attorney General):

The Office of the Attorney General supports S.J.R. 17 of the 78th Session. A victims' bill of rights in the Constitution will send the right community message. Victims will be treated with absolute dignity.

MR. DELAP:

The Las Vegas Metropolitan Police Department supports S.J.R. 17 of the 78th Session. I echo Mr. Duncan's comments.

SENATOR PATRICIA FARLEY (Senatorial District 8):

This discussion is about compassion for crime victims who have entered the justice system not of their own volition. While the accused is afforded many rights and accommodations, we need to ensure the rights of victims are equally protected.

RON DREHER (Peace Officers Research Association of Nevada):

As a 12-year, former major-crimes detective, I worked with many victims of horrific crimes. I testified in court many times regarding granting rights to victims. Senate Joint Resolution 17 of the 78th Session gives them enhanced rights, which are important. I have testified against defendants who are now on death row. A lot of my law enforcement friends have been threatened and even harmed by released criminals.

When we talk about "any person," it is important to note victims' families, their families' families and friends have a right and obligation to be heard at sentencings. Having been there with them, after postconviction hearings when perpetrators come up for appeal, I know people have not been notified. Legislation like Marsy's Law ensures victims' families are protected. They are the only ones who suffer, since the victims are mostly deceased. Families may have had every penny taken from them. On behalf of Nevada's peace officers, our law enforcement coalition, my fellow detectives and law enforcement officers, please pass the resolution.

KATIE HAYNES:

I am a survivor of domestic violence and abuse. What I have asked myself most often is, why did I stay with my abuser? In addition to living in fear, I made the common mistake of believing I could help make him better. I learned to deal with emotional and physical abuse. He continued to isolate me and make me feel like no one cared about me. My famous smile was gone, and I had pushed away everyone who loved me.

I did not understand how someone who said he loved me could be so cruel. I have always been strong and independent, but this man changed the person I was. The abuse began to affect my daughter. In April 2016, I had my last

argument with my abuser. He beat me in front of my daughter, ending with throwing me down a flight of stairs. My daughter saved my life by calling 911. I was in the hospital with a concussion, black eyes and bruises all over my body. We were placed in an emergency shelter for two months. When we felt safe again, we found a small apartment. My abuser found us, tried to strangle me and threw my daughter on the ground when she tried to protect me. Court was very difficult for us, but finally he is where he deserves to be.

My daughter and I are staying in transitional housing. I have met some of the most amazing women who have helped me through the most difficult time in my life. My smile is back to share with everyone who truly cares about me. I am beginning to see the light at the end of the tunnel. I could have used additional support from the legal process. My daughter and I would have greatly benefited from the provisions of S.J.R. 17 of the 78th Session, specifically section 23, subsection 1, paragraphs (b), (c) and (g). They require that victims receive notification when the accused are released on bail and ensure victims will be protected from harassment by the accused and their representatives.

RAYLENE JOHNSTON:

My daughters and I are abuse survivors. My eldest daughter, an honor student with a bright future, ran away. She turned up two weeks later requesting to move in with her uncle, instead of with me, my husband and her younger half sister. My brother told me my husband, the father of my youngest daughter, had sexually assaulted my oldest daughter. He was arrested but soon released on bail. My family was never notified he was free. While on bail, he constantly called and harassed us. His mother, who had paid his bail, called and threatened to kill me.

While this happened years ago, my daughter and I continue to suffer from stress related to these events. He went to trial, but due to lost evidence, he was found not guilty on a technicality and released. My family would have greatly benefited from the provisions of S.J.R. 17 of the 78th Session, specifically section 23, subsection 1, paragraphs (b), (c) and (g).

KELVIE MALIA:

You have my written testimony (Exhibit J). When I met my now-estranged husband in Bible study, I knew he had a checkered past but was bettering his life. The downward spiral began when I found out he and his family had

defrauded the IRS before our marriage, leading to the seizure of \$300,000 of my money.

My husband began stalking me, assuming my iCloud account to monitor my online activity and using the Find My iPhone app to track my location. In September 2016, I came home from work to what had become regular verbal abuse and harassment. I lay down to take a nap, to be awakened by him punching my back. He forced me into our truck. Drunk, he swerved all over the road while hitting me and leaving the vehicle to fight with strangers in the road.

When he pulled into a fast-food drive-through lane, I attempted to escape. I ran to a church to find someone to help me call the police. He chased me in the truck, smashing into a concrete wall and trying to trap me in an alley behind the church. He exited the truck and tried to grab me, pummeling my face with his closed fist before trying to force me back into the truck. I was bleeding from my face and vomiting blood. I was bedridden in a safe house for days.

Ten weeks later, he was arrested but released on bail within 19 hours. At his next hearing, I was intimidated by his family, friends and lawyer. The defense tried to cite my lack of immediate action, while I was recovering in the safe house, as grounds to drop the charges.

At his arraignment of a warrant for assault with a deadly weapon, he was given probation and released. The next court date was scheduled for February 7, but the defense was granted a continuance due to a conflict of interest, although my attacker had known about the hearing for 2 months.

When I envision my future, the thing I worry about most is safeguarding my personal safety from my estranged husband and his family and friends. Section 23, subsection 1, paragraph (b) of S.J.R. 17 of the 78th Session will allow victims like me to be reasonably protected from defendants and persons acting on their behalf.

Senate Committee on Judiciary
February 23, 2017
Page 32

CHAIR SEGERBLOM:

We will close the hearing on S.J.R. 17 of the 78th Session. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 3:41 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____



SJR 17 Group Endorsements
Advocacy Groups

10,000 Kids
The Center
Childrens Advocacy Alliance
Committee to Aid Abused Women
Family Promise
Hookers for Jesus
Junior League of Las Vegas
Nevada Coalition to End Domestic and Sexual Violence
Nevada Womens Lobby
New Hope International
Safe Embrace
Safe House
Safe Nest
Tu Casa Latina
Winnemucca Domestic Violence Shelter

Labor Organizations

Las Vegas Police Protective Association
Las Vegas Police Protective Association Civilian Employees

Law Enforcement Organizations

Nevada Sherriffs and Chiefs Association
Las Vegas Asian Pacific Police Officers Association
Las Vegas Asian Police Officers Association
Las Vegas Black Police Officers Association

Business Organizations

Hakkasan Group
Nevada Federation of Independent Businesses
Nevada Trucking Association



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Philip J. Kohn, Public Defender • Daren B. Richards, Assistant Public Defender



February 22, 2016

Remarks by John J. Piro, Esq.
Deputy Public Defender
Clark County Public Defenders Office

Dear Members of the Committee:

It is without question that Marsy and her family experienced an incredible tragedy. However, the dramatic change to criminal justice policy sought by SJR 17 in response to this family's tragedy is problematic for at least three reasons. First, it presents one tragic case as justification for a Constitutional change—not just a law that can be tweaked if unintended consequences result, but our Constitution, which cannot easily be tweaked when the billionaire behind this bill leaves us here in Nevada to deal with the consequences of this law. Marsy's Law paints the constitutional protections put in place by our country's founders, such as the presumption of innocence, as unjustified technicalities afforded to “dangerous” “rapists, murderers, [and] child molesters.”¹ Moreover, Marsy's Law conflates “victims' rights” and “criminal justice.”² Although a victim's participation in the criminal justice system is valuable for dignity, catharsis, and fairness purposes, it should not be confused with the constitutional due process protections afforded criminal defendants and convicts.

Second, Marsy's Law capitalizes on concern and empathy for victims of crime while ignoring the immense fiscal, legal, and policy concerns that will result from passage of this bill.

¹ <https://marsyslaw.us>

Finally, Marsy's story and the story of her murderer appear to present a flaw in the bail process. Despite this, SJR 17 uses the word “bail” only once, stating that the “safety of the victim and the victim's family [is to be] considered in fixing the amount of bail and release conditions for the defendant”³ However, this addition is of questionable value since Nevada law already on the books provides that public safety is a primary factor considered when setting bail. In sum, Marsy's law seeks to put the concerns of an individual accuser above the concerns of our justice system, the rights of the accused, and the community as a whole—as most of these provisions in SJR 17 will take affect before an accused is even convicted of a crime.

Alexander Hamilton once posited that a key function of a representative legislature is to prevent unqualified complacency to every sudden breeze of passion of the majority, which means that the legislature must occasionally ignore the will of a strong lobby to protect important legal and constitutional interests.⁴ Now is that time for our state's legislature.

I.

MARSY'S LAW: A SOLUTION IN SEARCH OF A PROBLEM

Marsy's law is a solution in search of a problem. Nevada already has several provisions in place by this legislature to protect a crime victim's safety, and nobody is trying to lessen those protections. So, now is it the position of this legislature that a California billionaire's⁵ wealth and

² See Ryan S. Appleby, Proposition 9, Marsy's Law: An Ill-Suited Ballot Initiative and the (Predictably) Unsatisfactory Results, 86 S. Cal. L. Rev. 321, 328 (2013).

³ Section 23(1)(c).

⁴ Id.

⁵ The main proponent of Marsy's Law is Henry Nicholas, Marsy's brother. He is the cofounder of Broadcom and currently valued at \$1.3 billion by Forbes magazine. He personally contributed \$4,851,406, accounting for 94 percent of the total amount spent to support the passage of Marsy's Law in California. In California, Proponents of Marsy's Law spent a total of \$5,149,931 on the campaign, as compared to the \$2,356,567 spent by various groups simultaneously opposing Marsy's Law and California's Proposition 6. The Marsy's Law campaign in California also spent two-and-a-half times the amount on “campaign consultants” as its opponents and \$75,000 on campaign literature and mailings, after extensive petition circulating. These expenditures allowed proponents to frame the issue as one of “victim's rights” rather than costly criminal law reform.

influence can now somehow influence law that is better thought out than the protections already debated upon and put in place by this legislature?

Additionally, Marsy's Law wants to provide alleged victims and accusers standing to compel the police, the prosecutors, and the court's to do certain actions, as seen fit by the alleged victim.⁶ Thus, it creates a constitutionally protected private right of action for the public to sue law enforcement, prosecutors, and defense attorneys trying to do their jobs. Frankly, it is rather shocking that there is no fiscal note attached to this bill.

Marsy's Law ignores the long standing belief that our court system should be dispassionate when handling court cases. In our justice system prosecutors must make decisions legitimately founded on the complex considerations necessary for the effective and efficient administration of law enforcement, without intervention by passionate accusers seeking intervention while motivated by personal concerns.⁷ Marsy's Law purports to change Nevada's criminal justice system by granting alleged victims the ability to force public officers or employees to carry out any aspect of this constitutional amendment, and to interject themselves into any court proceeding upon request—so even if I am arguing a 4th amendment issue, or a discovery motion, under this law, an accuser will be allowed to interject themselves into those proceedings to be “heard.”⁸ Thus, Marsy's Law expands the involvement of alleged victims by inserting a passionate and motivated 3rd party into every phase of criminal prosecution.

SJR 17 will most certainly limit the prosecution's ability to weigh whether to pursue conviction, offer a plea bargain, or drop the charges in light of scarce resources and the strength of the case. Most importantly, “Marsy's Law allows ‘victims’ to be involved prior to conviction,

⁶ Section 23(4).

⁷ Dix v. Superior Court, 53 Cal. 3d 442, 451, 807 P.2d 1063, 1066 (1991) (en banc).

⁸ Section 23(1)(h); Section 23(2)-(4).

that is, before it is actually determined whether the person is actually a victim at all.”⁹

Consequently, Marsy’s Law will almost certainly result in more trials being held because SJR 17 presents the possibility that prosecutors will lose their ability to exact evenhanded justice in exchange for pursuing convictions on behalf of especially persistent or vindictive accusers. In sum, “Marsy’s Law seeks to personalize a justice system intentionally depersonalized.”¹⁰

II.

Problems With The Individual Sections Of SJR 17

- (a) We already treat victims with dignity and respect in Nevada’s criminal justice system. Additionally, this section is vague and could impact vigorous cross-examination and the constitution’s confrontation clause.
- (b) This section could impede the right to have a defense attorney send an investigator to ask if a victim will speak to him or her, or the right to subpoena a witness to a hearing. Thus, this section infringes on a defendant’s Fifth and Sixth Amendment rights and Nevada cannot amend its constitution in a manner that conflicts with the U.S. Constitution.
- (c) We already have the safety of a victim, a victim’s family, and the community as a whole as a factor in fixing the amount of bail or release conditions.
- (d) This section is hugely problematic if it is intended to limit the discovery process for an accused in a criminal proceeding. There’s already a statute which allows the DA to withhold witness contact information on the Notice of Witnesses if the State can show the alleged victim could be harmed. Would this constitutional amendment abrogate statutes which entitle us to this information? Moreover, courts can and do restrict information provided in discovery upon request.
- (e) Nevada law already allows an alleged victim to refuse to be interviewed. So, this is a solution in search of a problem.
- (f) Alleged victims already confer with the prosecuting agency, so again this is another solution in search of a problem.
- (g) Alleged victims should absolutely have reasonable notice to all proceedings; however, SJR 17 neglects to account for the increased costs of sending out notifications for every hearing, to include motion hearings.

⁹ Ryan S. Appleby, Proposition 9, Marsy’s Law: An Ill-Suited Ballot Initiative and the (Predictably) Unsatisfactory Results, 86 S. Cal. L. Rev. 321, 357–58 (2013).

¹⁰ Id.

- (h) Alleged victims already have the right to be heard at sentencing, and parole hearings. This section would be expanding those rights to all other hearings. Again, another solution in search of a problem.
- (i) This “timely disposition” section will conflict with the 6th amendment right to effective assistance of counsel.
- (j) Again, alleged victims already have this right under Nevada law.
- (k) Again, we already have this protection for victims, and from what I understand the VINE system works well.
- (l) Victims should be entitled to restitution, but how do we enforce the word timely, and what does it mean?
- (m) Victims should, and already do have their property returned as soon as feasible.
- (n) Victims should be informed of all post-conviction proceedings, but this bill again neglects to address how that is to be done, and it also neglects the added costs of more notifications. Moreover, court cases are public records that are all online.
- (o) The safety of the community is always considered prior to release. This is another solution in search of a problem.
- (p) Victims should be paid first before parole and probation fees. But, that will affect the budget of parole and probation. Moreover, this can be accomplished through legislation. A constitutional change is unnecessary.
- (q) Victims should be notified of their rights, but should we allow our law enforcement agencies to be sued if this does not happen, as is contemplated under section 4?

Finally, it is important to note that the definition of victim in this bill is incredibly vague and over expansive. Thus, it will likely result in a vast swath of passionate people inserting themselves into the criminal justice process—a process that was intentionally designed to be dispassionate.

The purpose of our criminal justice system is to ferret out lies, by testing evidence under the crucible of cross-examination, while keeping the scales of justice balanced. The constitutional rights afforded defendants by our founders are not technicalities. They are well thought out principles debated by our founders when forming our constitution. Although, “smart on crime” is not as good of a slogan as “tough on crime,” it is important to heed Alexander Hamilton’s

words and take a hard stance here by refusing to let a billionaire's lobbying and influence shape criminal justice policy for our state by inserting passionate actors into a system designed to remain dispassionate. Thus, I strongly urge this committee to not pass SJR 17.

John J. Piro
Deputy Public Defender
Clark County Public Defenders Office



WASHOE COUNTY PUBLIC DEFENDER

ADVOCACY INTEGRITY COMMUNITY

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RENO, NEVADA 89520-0027
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(800) 762-8031
FAX (775) 337-4856

To: The Senate Judiciary Committee
From: The Washoe County Public Defender's Office
Date: February 22, 2017
RE: SJR 17-Senate Judiciary Committee Hearing for February 23, 2017

Opposition to SJR 17

The Washoe County Public Defender's Office opposes SJR 17. This resolution proposes to elevate the rights of victims by infringing upon the constitutional rights of the accused. Moreover, the rights of victims have already been codified within Nevada law for a number of years and therefore this resolution is wholly unwarranted and detrimental to criminal justice practice and procedure in Nevada.

Specifically, this resolution requires that the safety of the victim and the victim's family be considered as a factor when determining the pretrial or post-conviction release conditions of the defendant. It is important to note that the courts already consider the safety to the victim, the victim's family, or the general public when fixing the amount of bail and release conditions for the defendant pursuant to the statutory factors set forth within the NRS and by relevant Nevada case law as well.

Next, this resolution proposes that a victim should be entitled to be present at all public criminal and delinquency proceedings that the prosecutor and defendant are entitled to be present. If this passes, it will significantly hinder the prosecutor and the defense attorney from timely adjudicating cases and it will have the exact opposite effect of what this resolution intends to accomplish. For example, the Washoe County Public Defender's Office will meet with a defendant shortly following the arrest at the jail, usually within 72 hours, before a lower court magistrate and with the prosecutor present, to address initial appearance, custody status, and bail issues. Thereafter, our office will hold a number of pretrial and status conferences with the prosecutor at court in an effort to timely resolve cases. These are both critical stages within the criminal justice proceedings for the accused that may be delayed or hampered if this resolution passes - particularly if a victim asserts his or her right to be present at each and every proceeding.

In addition, this resolution will allow a victim to assert the timely disposition of a case following the arrest of a defendant. Notwithstanding, under the 6th Amendment to our United States Constitution, the defendant is afforded a fundamental constitutional right to a speedy trial and to have effective assistance of counsel at that trial. This fundamental right will most certainly be infringed upon by the passage of this resolution when the victim asserts that the case is not being disposed of in a timely fashion irrespective of the constitutional rights of the defendant. Other provisions within this resolution also invade the province of these important constitutional rights afforded to the defendant by allowing the victim to prevent the disclosure of certain information and records, or to allow the victim to refuse to participate in interviews or depositions in preparation for trial.

Moreover, despite the fact that the term "victim" has been codified for years within the NRS, this resolution also attempts to greatly expand the definition of victim to include any person "directly and proximately harmed by the commission of a criminal offense." This overly broad definition may encompass other persons involved in a criminal matter that were never intended to be included within this definition, such as a witness to a crime, that may now suffer emotional distress for witnessing a criminal offense, but not actually alleged to be a victim by the prosecutor in the case.

To be clear, this resolution is a misguided attempt to elevate the rights of victims at the expense of the rights of the accused which has had disastrous consequences in other states that have enacted similar legislation. These states are now facing constitutional challenges within their own state and federal court systems and they are struggling with the economic impact mandated upon their own criminal justice systems as a result of passing similar legislation. SJR 17 will have the same detrimental effect in Nevada. As a direct result, I would implore this committee to not pass SJR 17.

Sean B. Sullivan
Deputy Public Defender,
Washoe County Public Defender's Office

KELVIE MALIA – Domestic Violence Victim / SJR 17 Nevada Letter - 2017

My name is Kelvie Malia and I am lucky to be alive.

When I met my now estranged husband in Bible study I knew he had a checkered past but thought he was on his way to bettering his life. The downward spiral began when I found out the hard way that he and his family committed IRS fraud before we were married, leading to a seizure of \$300,000 of my own money.

While working as a traveling notary he began stalking me. He assumed my iCloud account to monitor my calls, texts, pictures as well as using the Find My iPhone app to track exactly where I was.

Last September was when the attack happened - 2016. I returned home from work to what was becoming regular verbal harassment and abuse. I laid down to take a nap only to be woken up by him punching me in the back. From here he forced me into our truck. He was drunk, swerving all over the road while hitting me, momentarily leaving the vehicle at times to try and fight strangers in the middle of the road.

He pulled into a drive-through to get some food, and this was where I attempted to escape. I ran to a nearby church to try and find anyone to help me call the police. He chased me in the truck, and at one point smashed into a concrete wall and tried to trap me in an alley behind the church to keep me from getting away. He then got out on foot and grabbed me. It was at this point, before attempting to throw me back in the truck, that he stood over me he pummeled me repeatedly, in the face, with a closed fist.

I was bleeding from my face and throwing up blood. I was bed-ridden in a safe house for days.

After being arrested two and a half months later, he was released on bail within 19 hours. At the next hearing, I was intimidated by the army of friends and family that showed up as well as by his lawyer. At one point the defense tried to cite my lack of immediate action as grounds to drop the case. I didn't take immediate action because I was bed-ridden at the safe house.

At his arraignment on a warrant for assault with a deadly weapon he was given prohibition, was released, and back out on the streets. The next court date was scheduled for February 7th but the defense was granted a continuance due to a "Conflict of interest." He had known about this date for two months.

Although there are many different sections of SJR17 that I would benefit from, as I look forward to the future I worry most about my own personal safety not only from my estranged husband but from his friends and family as well. Section 23.1 B would allow me to be reasonably protected from the defendant and persons acting on behalf of the defendant.

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-ninth Session
March 16, 2017**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:33 p.m. on Thursday, March 16, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Don Gustavson
Senator Michael Roberson
Senator Becky Harris

GUEST LEGISLATORS PRESENT:

Senator Joseph P. Hardy, Senatorial District No. 12
Senator James A. Settelmeyer, Senatorial District No. 17

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Kathleen Brady, Deputy Attorney General, Office of the Attorney General;
Department of Motor Vehicles, Department of Public Safety
Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General
David Cherry, City of Henderson
Jennifer Noble, Nevada District Attorneys Association

THE MOTION CARRIED. (SENATORS GUSTAVSON AND ROBERSON
VOTED NO.)

* * * * *

CHAIR SEGERBLOM:

We will close the work session on S.B. 125 and open the work session on Senate Joint Resolution (S.J.R.) 17 of the 78th Session.

SENATE JOINT RESOLUTION 17 OF THE 78TH SESSION: Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

MR. GUINAN:

Senate Joint Resolution 17 of the 78th Session proposes to amend the Nevada Constitution by replacing existing victims' rights in section 8, Article 1, with expanded provisions in the form of a victims' bill of rights, commonly known as Marsy's Law. The work session document (Exhibit F) notes the resolution must be approved in identical form by the Legislators of the Seventy-ninth Session to be voted on in the 2018 general election.

SENATOR GUSTAVSON MOVED TO DO PASS S.J.R. 17 OF THE 78TH SESSION.

SENATOR DENIS SECONDED THE MOTION.

CHAIR SEGERBLOM:

I do not like including this in the Constitution, but the voters should have the opportunity to decide that.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR SEGERBLOM:

We will close the work session on S.J.R. 17 of the 78th Session and open the work session on S.B. 140.

SENATE BILL 140: Authorizes the residential confinement or other appropriate supervision of certain older offenders. (BDR 16-798)

Senate Committee on Judiciary

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

March 16, 2017

SENATE JOINT RESOLUTION NO. 17 OF THE 78TH SESSION

Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Sponsored by: Senators Roberson, Harris, Farley, et al.

Date Heard: February 23, 2017

Fiscal Impact: Effect on Local Government: No.

Effect on the State: No.

Senate Joint Resolution No. 17 proposes to amend the *Nevada Constitution* by eliminating existing victims' rights provisions found in Section 8 of Article 1, and replacing them with an expanded set of provisions in the form of a victims' bill of rights.

Amendments: None

Special Note: This resolution must be approved in identical form by the 2017 Legislature in order to be put before the voters at the 2018 General Election.

NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE FIFTY-EIGHTH DAY

CARSON CITY (Tuesday), April 4, 2017

Senate called to order at 11:56 a.m.

President pro Tempore Denis presiding.

Roll called.

All present except for Senator Spearman, who was excused.

Prayer by the Chaplain, Reverend Jedidiah Maschke.

Almighty God, may we remember Your generosity and constantly do Your will. Bless our land with honest industry, truthful education and an honorable way of life. Save us from violence, discord and confusion; from pride, arrogance, and from every evil course of action. Grant that we, who came from many nations with many different languages, may be a united people.

Support us in defending our liberties, and give those to whom we have entrusted the authority of government Your spirit of wisdom, that they may be wise in counsel, firm in good resolution and unwavering in duty. May there be peace in our land. When times are prosperous, may our hearts be thankful, and in troubled times, do not let our trust in You fail.

Through Jesus Christ, our Lord,

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President pro Tempore and Secretary are authorized to make the necessary corrections and additions.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Ford moved that the General File be considered next.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 117.

Bill read third time.

Remarks by Senator Settelmeyer.

Senate Bill No. 117 requires each polling place to have a separate line for voters with disabilities or who are not physically able to wait in line to vote. Voters in this line must be permitted to vote before any voter who is not disabled and is physically able to wait in line. The bill sets forth an alternative to these provisions by requiring an election board officer at each polling place to allow voters with disabilities or who are not physically able to wait in line to move to the front of the line in order to vote.

Roll call on Senate Bill No. 117:

YEAS—20.

NAYS—None.

EXCUSED—Spearman.

Senate Bill No. 117 having received a constitutional majority, Mr. President pro Tempore declared it passed.
Bill ordered transmitted to Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Parks moved that Senate Bill No. 175 be taken from the General File and placed on the Secretary's desk.
Motion carried.

REMARKS FROM THE FLOOR

Senator Roberson requested the following remarks be entered in the Journal.

SENATOR ROBERSON:

I would like to thank everyone who is here for Nevada Equality Coalition Lobby Day. I believe it is also Equal Pay Day. I was proud to be the primary sponsor of the first equal pay bill to pass out of this Body, Senate Bill No. 176 of the 78th Session. There are two important bills up for a vote today, both of which positively affect the LGBTQ community. They are S.B. No. 201 and A.B. No. 99. I will be voting in favor of both of these bills today. In 2015, I voted in favor of S.B. 353, which was the previous iteration of S.B. No. 201 being presented this Session. I was also proud to co-sponsor S.B. 209 in the 2013 session. That bill designated as a hate crime, crimes motivated by a victim's gender identity.

A New York Times article from June 16, 2016, in the wake of the shooting at a gay nightclub in Orlando, Florida, documented that gay, bisexual and transgender people are the most likely targets of hate crimes in America. This article stated the LGBTQ community is: "...twice as likely to be targeted as African-Americans and the rate of hate crimes against them has surpassed that of crimes against Jews." It continued by stating: "Nearly a fifth of the 5,462 so-called single-bias hate crimes reported to the Federal Bureau of Investigation in 2014 were because of the target's sexual orientation, or, in some cases, their perceived orientation." It also stated: "Finding accurate statistics about hate crimes targeting LGBT people is challenging, in part, because victims—fearful of outing themselves to family members or employers—might choose not to report an attack..." The actual numbers are likely higher.

This is also National Crime Victims' Rights Week and Sexual Assault Awareness Month. Considering that members of vulnerable populations such as the LGBTQ community are disproportionately victimized, it would seem appropriate that we would consider Senate Joint Resolution No. 17, also known as Marsy's Law, today. Marsy's Law provides an expanded list of much-needed and long-overdue, enforceable, constitutional rights to victims of crime. Among other rights, S.J.R. No. 17 would give victims: the right to be treated with fairness and respect throughout the criminal justice process; the right to be reasonably protected from the defendant and persons acting on behalf of the defendant; the right to be heard at criminal stages of the trial, and the right to be notified of their rights as crime victims in the State of Nevada. This resolution will give Nevada's crime victims equal rights. This is something I hope we can all support, and, in fact, I know many in this Body already do support this.

Last session, S.J.R. No. 17 was passed in this Body by a vote of 15 to 6. Included in those who supported it were the current President pro Tempore; the current Nevada Representative for District Number 4, Ruben Kihuen; the Chair of Senate Transportation Committee and the late Senator Debbie Smith. Last session in the Assembly, every Republican and every Democrat except one voted in favor of this bill. Because S.J.R. No. 17 amends the Constitution, it must be passed again. This year, Marsy's Law was passed unanimously by the Senate Judiciary Committee. The Senators from Senate Districts 5, 8, 9 and 15 all testified in support of the bill.

The current Majority Leader and the Chair of the Judiciary Committee, both of whom voted against S.J.R. 17 last Session, voted this Session for passage of this bill in Committee.

It has been 19 days since S.J.R. No. 17 passed unanimously in the Senate Judiciary Committee, yet it has not been delivered to the Senate Floor. So far this Session, we have seen introduced no less than six bills with an emphasis on aiding, in one way or another, the rights of convicted criminals. Among these bills are S.B. Nos. 125, 184, 223, 268, 275 and 306. There are many more such bills in the Assembly, yet here we are—19 days since Committee passage and S.J.R. No. 17 has not been brought forward to the Senate Floor.

National Crime Victims' Rights Week is being commemorated this week, April 2 through April 8. This year's theme "Strength, Resilience, Justice" reflects this vision of the future; one in which all victims are strengthened by the response they receive; organizations are resilient to challenges, and communities are able to seek collective justice and healing. I respectfully ask the Senate Majority Leader and the Senate Judiciary Committee Chair to provide that collective justice and healing by bringing forth S.J.R. No. 17. You have the power and ability to do it today. I believe you have the support of this Body to suspend the rules and call a vote for Marsy's Law today. If you do, I believe it will pass. On Equality Day, let us provide equal rights for victims of crime; bring S.J.R. No. 17 to the Senate Floor.

SENATOR FORD:

Perhaps the Senator from District 20 did not look at today's agenda. Senate Joint Resolution No.17 is on a report from the Judiciary Committee on this agenda. We will not move it to General File today, and we will let it run its course.

GENERAL FILE AND THIRD READING

Senate Bill No. 201.

Bill read third time.

Remarks by Senators Parks and Hardy.

SENATOR PARKS:

Senate Bill No. 201 prohibits a psychotherapist from providing conversion therapy to a person who is under 18 years of age. The practice of conversion therapy has been denounced and discredited by virtually all major American medical, psychiatric, psychological and professional counseling organizations. Young people who have undergone conversion therapy have reported increased anxiety, depression, helplessness, hopelessness, social withdrawal, self-destructive behavior such as drug abuse and, in some cases, have committed suicide. The devastating consequences of conversion therapy are well-documented.

Today, mainstream medical establishments agree, that conversion therapy does not work; it is a dangerous, unscientific and unethical practice based on the premise that people can change their sexual orientation or gender identity and expression. Medical science also recognizes that being lesbian, gay, bisexual or transgender is part of the natural spectrum of human identity and is not a disease, disorder or illness.

Senate Bill No. 201 simply states it shall be considered unprofessional conduct to provide conversion therapy by a person who is licensed to provide professional mental health counseling to a patient under 18 years of age and shall subject the provider to discipline by the relevant licensing entity. It is important to point out that prohibiting conversion therapy would not prevent religious leaders from counseling youth on sexual issues. Conversion therapy is more than getting LGBTQ youth to hate themselves.

Finally, I'd like each of you to consider this: if conversion therapy really works, why would it not work to turn someone who is heterosexual, homosexual?

SENATOR HARDY:

I am not in favor of conversion therapy; I, however, have some concerns about things not stated in the bill. For example, how would a professional respond to a youth who is questioning their sexuality if they are not allowed to respond to questions? From an ecclesiastical standpoint, there is a question of confidentiality. When a lay preacher is a psychologist, social worker or psychiatrist and is approached by a youth who is concerned about their sexuality, if a lay pastor

SENATOR ATKINSON:

I rise in support of Assembly Bill. No. 99. I understand some of the challenges people in the LGBTQ community that I know have had to face, because a lot of them have come from foster homes, especially those that have been identified later by their parents who have given them up because they perceive them to be gay. I have personally heard from many of them about how they were treated when they went to foster care. There are many challenges to being a foster parent, and this is one of them. If we are not willing to provide an avenue and an opportunity for individuals to have training, then I do not know what we are doing as a Body and a State.

These issues are more complicated when you are dealing with someone with whom you are not familiar. This is what this bill is attempting to address. When someone is identified as being different, transgender, gay, or other, sometimes parents, even biological parents do not know what to do. I am often asked that question. I say to those parents, that they should go get training. I received a message a couple of weeks ago from a mother who found out that her 15-year-old son might be gay by intercepting some things on his phone.

She told me she loves her child and does not know what to do because she wants to love him no matter what. I contacted resources for her to get some training so she could get more information and get to where she thought she should be as a parent. That is what she wanted. She understood where her child was and was okay with that; she just wanted assistance in being ready for what might come regarding her child.

This bill goes a long way in addressing these types of issues when we are placing children, because many times the foster parent does not know the sexuality of a child when he or she is placed. Sometimes we are opposed to something because we do not understand the challenges that happen. I know a lot of young, African-American men that have been displaced and who have ended up in foster care who have not been treated well. It is not because the foster parent did not want to love and embrace that person, it is because they did not know how. This is the perfect opportunity for us to mandate or enforce that those providing foster care receive this training. That is the strongest part of this bill, and I urge you to support it.

Roll call on Assembly Bill No. 99:

YEAS—18.

NAYS—Gustavson, Hardy—2.

EXCUSED—Spearman.

Assembly Bill No. 99 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

REPORTS OF COMMITTEES

Mr. President pro Tempore:

Your Committee on Commerce, Labor and Energy, to which were referred Senate Bills Nos. 135, 256, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

KELVIN ATKINSON, *Chair*

Mr. President pro Tempore:

Your Committee on Health and Human Services, to which was referred Senate Bill No. 27, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

PAT SPEARMAN, *Chair*

Mr. President pro Tempore:

Your Committee on Judiciary, to which was referred Senate Joint Resolution No. 17 of the 78th Session, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE SIXTY-FIRST DAY

CARSON CITY (Friday), April 7, 2017

Senate called to order at 11:19 a.m.

President pro Tempore Denis presiding.

Roll called.

All present except Senators Farley and Kieckhefer, who were excused.

Prayer by Rajan Zed.

Om

bhur bhuvah svah

tat Savitur varenyam

bhargo devasya dhimahi

dhiyo you nah prachodayat

We meditate on the transcendental glory of the Deity Supreme, who is inside the heart of the Earth, inside the life of the sky and inside the soul of the heaven. May He stimulate and illuminate our minds.

Asato ma sad gamaya

Tamaso ma jyotir gamaya

Mrityor mamrtam gamaya

Lead us from the unreal to the Real.

Lead us from darkness to Light.

Lead us from death to immortality.

tasmadasaktah satatam karyam karma samacara

asakto hyacarankarma paramapnoti purusah

karmanaiva hi samsiddhimasthita janakadayah

lokasangrahamevapi sampasyankartumarhasi

Strive constantly to serve the welfare of the world; by devotion to selfless one attains the supreme goal of life. Do your work with the welfare of others always in mind.

Om saha naavavatu

Saha nau bhunaktu

Saha viiryan karavaavahai

Tejasvi naavadhiitamastu

Maa vidhvishhaavahai

May we be protected together.

May we be nourished together.

May we work together with great vigor.

May our study be enlightening.

May no obstacle arise between us.

samani va akutih

samana hridayani vah

samanam astu vo mano

Senate Daily Journal

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Senator Atkinson moved the adoption of the amendment.

Remarks by Senator Atkinson.

Amendment No. 100 makes one change to Senate Bill No. 256. The amendment adds a dental hygienist to those persons that may be appointed to a panel by the Board of Dental Examiners of Nevada to review an investigation and informal hearing by an investigator.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 283.

Bill read second time and ordered to third reading.

Senate Joint Resolution No. 17 of the 78th Session.

Resolution read second time and ordered to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Woodhouse moved that Senate Bill No. 135 be re-referred to the Committee on Finance upon return from reprint.

Motion carried.

Bill ordered reprinted, engrossed and re-referred to the Committee on Finance.

UNFINISHED BUSINESS

There being no objections, the President and Secretary signed Assembly Bill No. 99.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Ratti, the privilege of the floor of the Senate Chamber for this day was extended to the High Desert Montessori Charter School, Reno, Nevada.

On request of Senator Roberson, the privilege of the floor of the Senate Chamber for this day was extended to James Epifanio, Roberta Epifanio, Laura Herrick, Patricia Moser Morris and Lori Piotrowski.

On request of Senator Settelmeyer, the privilege of the floor of the Senate Chamber for this day was extended to Jada Mandeville.

Senator Ford moved that the Senate adjourn until Monday, April 10, 2017, at 11:00 a.m.

Motion carried.

Senate adjourned at 11:53 a.m.

Approved:

MOISES DENIS

President pro Tempore of the Senate

Attest: CLAIRE J. CLIFT

Secretary of the Senate

UNION LABEL

NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE SIXTY-FOURTH DAY

CARSON CITY (Monday), April 10, 2017

Senate called to order at 11:50 a.m.

President pro Tempore Denis presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor J.J. Tuttle.

Dear wise and loving Father: First, let me say, "Thank you" on behalf of all who are gathered here today. Thank You for Your many and abundant blessings. Thank You for life itself, for the measure of health we need to fulfill our callings, for sustenance and for friendships. Thank You for the ability to be involved in useful work and for the honor of bearing appropriate responsibilities. Thanks, as well, for the freedom to embrace You or the freedom to reject You. Thank You for loving us even so from Your boundless and gracious nature. In the scriptures, You have said that citizens ought to obey the governing authorities since You have established those very authorities to promote peace and order and justice.

Therefore, I pray for our Senators, for the various committees of this body and, in particular, for these assembled members and staff gathered here this morning. I am asking that You would graciously grant them wisdom to govern amid the conflicting interests and issues of our times; a sense of the welfare and true needs of our people; a keen thirst for justice and rightness; confidence in what is good and fitting; the ability to work together in harmony even when there is honest disagreement; personal peace in their lives and joy in their tasks.

I pray for the agenda set before them today. Please give an assurance of what would please You and what would benefit those who live and work in the State of Nevada.

It is in Your most blessed name we pray,

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President pro Tempore and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President pro Tempore:

Your Committee on Government Affairs, to which were referred Senate Bills Nos. 399, 422, 501, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Government Affairs, to which was referred Senate Bill No. 186, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass, and re-refer to the Committee on Finance.

Senate Daily Journal

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DAVID R. PARKS, *Chair*

Mr. President pro Tempore:

Your Committee on Health and Human Services, to which were referred Senate Bills Nos. 2, 60, 101, 159, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

PAT SPEARMAN, *Chair*

Mr. President pro Tempore:

Your Committee on Transportation, to which was referred Senate Bill No. 320, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARK A. MANENDO, *Chair*

WAIVERS AND EXEMPTIONS

NOTICE OF EXEMPTION

April 10, 2017

The Fiscal Analysis Division, pursuant to Joint Standing Rule No. 14.6, has determined the eligibility for exemption of: Senate Bill No. 486.

MARK Krmpotic

Fiscal Analysis Division

MOTIONS, RESOLUTIONS AND NOTICES

Senator Parks moved that Senate Bill No. 186, just reported out of Committee, be re-referred to the Committee on Finance.

Motion carried.

Senator Ford moved that the following persons be accepted as accredited press representatives, and that they be assigned space at the press table and allowed the use of appropriate media facilities: GREENSPUN MEDIA GROUP - LAS VEGAS SUN: Yvonne Gonzalez; KOLO-TV: Terri Russell; NEVADA FORWARD: Michael Willoughby; RENO GAZETTE-JOURNAL: Jason Bean, Marcella Corona, Michael Higdon; VEGAS VOICE, THE: Dan Roberts.

Motion carried.

Senator Ford moved that Senate Bills Nos. 12, 27, 75, 125, 128, 140, 141, 160, 256, 283, 412; Senate Joint Resolution No. 17 of the 78th Session be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

Senator Ford gave notice, per Senate Standing Rule No. 91, that on the next legislative day, the Senate would begin suspending necessary Standing Rules in order to accommodate the movement of bills and resolutions out of the Senate in a timely manner.

Senator Segerblom has approved the addition of Senator Harris as a primary sponsor on Senate Bill No. 187.

SECOND READING AND AMENDMENT

Senate Bill No. 31.

Bill read second time.

NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE SIXTY-FIFTH DAY

CARSON CITY (Tuesday), April 11, 2017

Senate called to order at 11:06 a.m.

President pro Tempore Denis presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor J.J. Tuttle.

We gather together here today intent on doing good work. We seek to represent fairly and well those who have given us this task. May our efforts be blessed with insight, guided by understanding and wisdom. We seek to serve with respect for all. May our personal faiths give us strength to act honestly and well in all matters before us.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President pro Tempore and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President pro Tempore:

Your Committee on Commerce, Labor and Energy, to which was referred Senate Bill No. 55, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

KELVIN ATKINSON, *Chair*

Mr. President pro Tempore:

Your Committee on Education, to which were referred Senate Bills Nos. 19, 242, 518, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Education, to which were referred Senate Bills Nos. 132, 224, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and re-refer to the Committee on Finance.

MOISES DENIS, *Chair*

Mr. President pro Tempore:

Your Committee on Government Affairs, to which was referred Senate Bill No. 136, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass, and re-refer to the Committee on Finance.

Senate Daily Journal

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Also, your Committee on Government Affairs, to which was referred Senate Bill No. 26, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

DAVID R. PARKS, *Chair*

Mr. President pro Tempore:

Your Committee on Health and Human Services, to which were referred Senate Bills Nos. 326, 355, 388, 510, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Health and Human Services, to which was re-referred Senate Bill No. 318, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

PAT SPEARMAN, *Chair*

Mr. President pro Tempore:

Your Committee on Legislative Operations and Elections, to which was referred Senate Bill No. 121, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Legislative Operations and Elections, to which was referred Senate Bill No. 327, has had the same under consideration, and begs leave to report the same back with the recommendation: Re-refer to the Committee on Finance.

NICOLE J. CANNIZZARO, *Chair*

Mr. President pro Tempore:

Your Committee on Transportation, to which were referred Senate Bills Nos. 53, 149, 312, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARK A. MANENDO, *Chair*

MOTIONS, RESOLUTIONS AND NOTICES

Senator Parks moved that Senate Bill No. 136, just reported out of Committee, be re-referred to the Committee on Finance.

Motion carried.

Senator Cannizzaro moved that Senate Bill No. 327, just reported out of Committee, be re-referred to the Committee on Finance.

Motion carried.

Senator Ford moved that Senate Bills Nos. 12, 27, 31, 39, 40, 41, 51, 75, 76, 118, 119, 125, 127, 128, 130, 138, 141, 156, 160, 163, 165, 171, 176, 206, 237, 251, 256, 258, 279, 283, 313, 412; Senate Joint Resolution No. 17 of the 78th Session be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 2.

Bill read second time.

The following amendment was proposed by the Committee on Health and Human Services:

Amendment No. 49.

SUMMARY—Revises provisions relating to the surrender of a newborn child to a provider of emergency services. (BDR 38-39)

NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE SIXTY-SIXTH DAY

CARSON CITY (Wednesday), April 12, 2017

Senate called to order at 11:25 a.m.

President pro Tempore Denis presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor J.J. Tuttle.

This morning we gather to serve our community, to use our resources wisely and well, to represent all members of our community fairly, to make decisions that promote the common good. We recognize our responsibility to the past and the future and the rights and needs of both individuals and community. As trusted servants, we seek blessings on our deliberations and on our efforts here, today. May we act wisely and well.

Today, may I be open to others' ideas and beliefs, respectful of our differences, not threatened by them. May I grow in understanding of my own motives, knowing that people often act out of their own fears. May I be a force for replacing fear with insight, helping us all to be patient and kind as we talk. Strength, real strength, can always find compromise. Working together, may we find a common ground, enable us to move forward with a shared purpose. May we see what is truly important and what unites us, focusing on that, to banish roadblocks of ego and fear.

Today, may I be open to others' ideas and beliefs.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President pro Tempore and Secretary are authorized to make the necessary

REPORTS OF COMMITTEES

Mr. President pro Tempore:

Your Committee on Commerce, Labor and Energy, to which were referred Senate Bills Nos. 196, 466, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

KELVIN ATKINSON, *Chair*

Mr. President pro Tempore:

Your Committee on Education, to which was referred Senate Bill No. 310, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Education, to which was referred Senate Bill No. 248, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass, and re-refer to the Committee on Finance.

Senate Daily Journal

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April 12, 2017

The Fiscal Analysis Division, pursuant to Joint Standing Rule No. 14.6, has determined the eligibility for exemption of: Senate Bills Nos. 205, 280, 286, 355, 414, 430, 436, 451, 453, 459, 478, 479, 487, 498.

MARK KRMPOTIC
Fiscal Analysis Division

MOTIONS, RESOLUTIONS AND NOTICES

Senator Woodhouse moved that Senate Bill No. 248, just reported out of Committee, be re-referred to the Committee on Finance.

Motion carried.

Senator Woodhouse moved that Senate Bill No. 178, just reported out of Committee, be re-referred to the Committee on Finance.

Motion carried.

Senator Woodhouse moved that Senate Bill No. 506, just reported out of Committee, be re-referred to the Committee on Finance.

Motion carried.

Senator Woodhouse moved that Senate Bill No. 501 be taken from the General File and re-referred to the Committee on Finance.

Motion carried.

Senator Ford moved that Senate Bills Nos. 2, 12, 27, 31, 39, 40, 41, 51, 60, 75, 76, 101, 118, 119, 125, 127, 128, 130, 138, 141, 156, 159, 160, 163, 165, 171, 176, 206, 237, 251, 256, 258, 279, 283, 313, 320, 399, 412, 422; Senate Joint Resolution No. 17 of the 78th Session be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 19.

Bill read second time.

The following amendment was proposed by the Committee on Education:

Amendment No. 13.

SUMMARY—Revises provisions relating to dual credit courses. (BDR 34-227)

AN ACT relating to education; prescribing the requirements for a pupil to enroll in a dual credit course; providing that the State Board of Education must not unreasonably limit the number of dual credit courses in which a pupil may enroll; requiring the board of trustees of each school district to provide written notice identifying the dual credit courses available to pupils enrolled in the district; requiring each school district and charter school to enter into a cooperative agreement with one or more community colleges, state colleges and universities to provide dual credit courses to pupils enrolled in the school district or charter school; providing that an academic plan for a pupil who is enrolled in a dual credit course must include certain information; providing that a pupil who successfully completes a program of

NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE SEVENTY-FIRST DAY

CARSON CITY (Monday), April 17, 2017

Senate called to order at 11:32 a.m.

President Hutchison presiding.

Roll called.

All present.

Prayer by the Chaplain, Captain Mark Cyr.

My Heavenly Father, we come to you today asking for your guidance. Guide our State leaders as they seek ways to improve our State. Lord, we ask for Your hand of blessing to be on them and their families as they lead us. We pray for their support staff and pray that You bless them and give them energy as well. Protect our leaders from discouragement and distractions that might steer them away from the path that You have called them to. Speak to their hearts and lead them in a direction of truth that brings about genuine peace, unity and freedom for the people of Nevada. Father, we pray these things in the precious name of Jesus,

AMEN.

Pledge of Allegiance to the Flag led by Clayton Taylor.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Commerce, Labor and Energy, to which were referred Senate Bills Nos. 290, 337, 383, 408, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Commerce, Labor and Energy, to which was referred Senate Bill No. 347, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass, and re-refer to the Committee on Finance.

Also, your Committee on Commerce, Labor and Energy, to which was referred Senate Bill No. 289, has had the same under consideration, and begs leave to report the same back with the recommendation: Re-refer to the Committee on Finance.

KELVIN ATKINSON, *Chair*

Mr. President:

Your Committee on Education, to which were referred Senate Bills Nos. 390, 430, has had the same under consideration, and begs leave to report the same back with the recommendation: Re-refer to the Committee on Finance.

MOISES DENIS, *Chair*

Remarks by Senator Manendo.

Senate Bill No. 422 provides that a regional planning coalition may designate the regional transportation commission to administer the comprehensive regional policy plan. The Southern Nevada Regional Planning Coalition Act is repealed.

Roll call on Senate Bill No. 422:

YEAS—21.

NAYS—None.

Senate Bill No. 422 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to Assembly.

Senate Joint Resolution No. 17 of the 78th Session.

Resolution read third time.

Remarks by Senators Roberson and Segerblom.

SENATOR ROBERSON:

Senate Joint Resolution No. 17 of the 78th Legislative Session proposes to amend the Nevada Constitution by eliminating existing victims' rights provisions found in Article 1, Section 8 and replacing them with an expanded set of provisions in the form of a victims' bill of rights.

The proposed new section of the Nevada Constitution is modeled after the victims' bill of rights set forth in the California Constitution as it was amended in 2008 by what is commonly referred to as Marsy's Law (Cal. Const. Art. 1, § 28). The rights to which a victim of crime would be entitled under the Nevada Constitution include the right: to be treated with fairness and respect for his or her privacy and dignity and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process; to be reasonably protected from the defendant and persons acting on behalf of the defendant; to have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant; to prevent the disclosure of confidential information or records to the defendant, which could be used to locate or harass the victim or the victim's family; to refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents; to reasonably confer with the prosecuting agency, upon request, regarding the case; to give reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings and to be present at all such proceedings; to be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing and at any parole proceeding; to the timely disposition of the case following the arrest of the defendant; to provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant; to be informed, upon request, of the conviction, sentence, place and time of incarceration or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody; to full and timely restitution; to the prompt return of legal property when no longer needed as evidence; to be informed of all post-conviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender; to have the safety of the victim, the victim's family and the general public considered before any parole or other post-judgment release decision is made; to have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim; and to be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.

SENATOR SEGERBLOM:

I am support of this bill because it allows the voters to decide. There will be other Constitutional amendments coming forward, and I would like to remind the body that a vote on a Constitutional amendment is not in favor of the amendment; it is to allow the people of Nevada to have their say.

Roll call on Senate Joint Resolution No. 17 of the 78th Session:

YEAS—21.

NAYS—None.

Senate Joint Resolution No. 17 of the 78th Session having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to Assembly.

Senate Bill No. 91.

Bill read third time.

The following amendment was proposed by Senator Hardy:

Amendment No. 402.

SUMMARY—Revises provisions relating to drug donation programs.
(BDR 40-271)

AN ACT relating to prescription drugs; combining the HIV/AIDS Drug Donation Program and the Cancer Drug Donation Program to create the Prescription Drug Donation Program; authorizing a person or governmental entity to donate ~~to certain~~ prescription drugs to the Program; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the HIV/AIDS Drug Donation Program and the Cancer Drug Donation Program. (NRS 453B.010-453B.130, 453B.150-453B.240) This bill: (1) combines those Programs to create the Prescription Drug Donation Program; and (2) additionally allows a person or governmental entity to donate to the Prescription Drug Donation Program any prescription drug ~~[that has a wholesale acquisition cost of more than \$500 per month if the drug is used in accordance with the instructions of the manufacturer.]~~ with limited exceptions.

Section 2 of this bill authorizes a person or governmental entity to donate to the Prescription Drug Donation Program any prescription drug, other than marijuana and certain other drugs for which the patient must be registered with the manufacturer ~~[; that: (1) is used to treat the human immunodeficiency virus, acquired immunodeficiency syndrome or cancer; or (2) has a wholesale acquisition cost of more than \$500 per month if the drug is used in accordance with the instructions of the manufacturer.]~~ Section 2 also authorizes a pharmacy, medical facility, health clinic or provider of health care to impose a handling fee upon a patient who receives a donated prescription drug and imposes requirements concerning the acceptance, distribution or dispensing of a donated prescription drug.

Section 3 of this bill prescribes certain recordkeeping requirements relating to donated prescription drugs and the storage of donated prescription drugs.

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON CORRECTIONS, PAROLE, AND PROBATION**

**Seventy-Ninth Session
April 18, 2017**

The Committee on Corrections, Parole, and Probation was called to order by Chairman James Ohrenschall at 9:07 a.m. on Tuesday, April 18, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Steve Yeager, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senate District No. 7

Minutes ID: 838



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Tonja Brown, Private Citizen, Carson City, Nevada
Wes Goetz, Private Citizen, Incline Village, Nevada

Chairman Ohrenschall:

[Roll was taken. Committee protocol and rules were explained.] Today we have Senator Parks here to present Senate Joint Resolution 1, and I will ask Vice Chairman Yeager to take over for me because I am going to present with Senator Parks.

[Assemblyman Yeager assumed the Chair.]

Senate Joint Resolution 1: Proposes to amend the Nevada Constitution to replace the State Board of Pardons Commissioners with the Clemency Board and requires the Legislature to provide for the organization and duties of the Clemency Board. (BDR C-567)

Vice Chairman Yeager:

We will open the hearing on Senate Joint Resolution 1.

Senator David R. Parks, Senate District No. 7:

Thank you for the opportunity to provide testimony on Senate Joint Resolution 1. Senate Joint Resolution 1 proposes to amend the *Constitution of the State of Nevada* to replace the State Board of Pardons Commissioners with a Clemency Board and to require the Legislature to provide for the organization and duties of the Clemency Board through enabling legislation.

The State Board of Pardons Commissioners is currently established under Article 5, Section 14, paragraph 1 of the *Nevada Constitution*. Its operation is governed by *Nevada Revised Statutes* (NRS) Chapter 213. Under Section 14 of Article 5 of the *Nevada Constitution*, the Pardons Board consists of the Governor, the justices of the Supreme Court of Nevada, and the Attorney General. The authority of the Pardons Board is to grant pardons after convictions, to commute punishments, to address and remit fines and forfeitures, and other actions relating to pardons. There is an exception with the sentence of death or a sentence of life imprisonment without the possibility of parole. Those sentences cannot be commuted to parole. The Clemency Board, as proposed in S.J.R. 1, would consist of nine members: three members would be appointed by the Governor, three appointed by

Assemblyman Ohrenschall:

The way the Clemency Board is set to be structured, the way we have the appointees—we provide that the 2021 Legislature will provide for the membership—it will be balanced and, in my opinion, better than having the Governor have unilateral power. We have seen where the Governor of Illinois unilaterally commuted every death sentence in Illinois. While some people thought that was the most wonderful thing that could happen, many other people did not agree with what he did. He did that unilaterally. I think the fact that we are retaining a board, and the 2021 Legislature will provide how the board will function, it will be fairer and will not do anything that might shock the public. I do not have statistics on me right now, but I will try to get them.

Assemblyman Hansen:

The interesting thing about this Clemency Board is that it goes far beyond pardons. As you said, people can have their civil rights restored in some cases, and people who have been convicted and have been out of prison for 15 or 20 years can come back to the Board and have certain elements of clemency granted. I am very supportive of that. I think this is a really good idea, and it may help. The only fear that I have is the public safety angle, and I can see that this will have a major hurdle in getting past the voters. They are going to think it is another "soft on crime" measure.

Assemblyman Ohrenschall:

The current State Board of Pardons Commissioners has the power to grant a pardon. If they feel there is enough new evidence on someone who was convicted in 1980, but he has exhausted all of his appeals, they have the power to grant a pardon. They also have a more significant power. We will say the judge sentences this person to seven or eight sentences running consecutively, he has served 40 years, and he is going to die of old age in prison: the Pardons Board can look at how he has done in prison, and they can take the last two sentences and run them concurrently, or they may give him a chance at parole.

Another thing that is important to mention is, as I understand how the Pardons Board works now, the district attorney's office is notified if the person is seeking a pardon, even for a community case, and the victim is notified by the prosecutor's office. The Pardons Board hears that now, and there is nothing in this bill that will change the process that allows the prosecutor and the victim to also be heard.

Assemblyman Hansen:

Then the victim can and will be part of the process under this new Clemency Board as well? That is really an important point.

Assemblyman Ohrenschall:

It is not specified in this language or in the *Constitution*, but I believe that could be specified in statute in 2021 if this were to pass. As I understand it now, the Pardons Board does notify the prosecutor's office. I do not know if they automatically notify every victim or if they leave that up to the prosecutor's office to reach out to the victims to see if they want to be

heard at the Pardons Board hearing under current law. There may be some inertia here on how it works. I do not want to speak for the Pardons Board, but this is my understanding of how it works.

Vice Chairman Yeager:

We will be hearing Senate Joint Resolution 17 of the 78th Session in the near future. This seeks to give victims constitutional rights. If that were to be enacted, I imagine that will overlay on this process so that notification or participation would be allowed. Maybe that is something we can ask of the proponents during that hearing and how they envision it happening with respect to this Clemency Board, were it to be enacted.

Assemblyman Pickard:

You raised a good point. Frankly, I do not think I share Assemblyman Hansen's excitement for this, but I came in ambivalent. I do not know what is broken. During my activities, I have not heard that anything was wrong with the existing system or how it is operating. I understand there is an issue with the frequency of meetings and that it is not fast enough for some. I would like you to speak to that. The concern that came to mind as I reviewed this was that we are seeking to take elected members of the board—and every board member is currently elected by the voters—and creating an unelected body appointed by them. As I see it, we are pulling the process away from a position of responsibility to voters. How is it that we can maintain that accountability if we push it away from those who are elected?

Assemblyman Ohrenschall:

Certainly this bill does change the composition of the Clemency Board; however, the appointees are appointed by elected officials, and the Legislature provides for the framework of the rest of the appointees. The elected officials are still accountable for how this Board will operate. I believe that changing it from the actual elected officials to their representatives will enable the Board to meet more frequently, and the language provided will ensure some members will have expertise in the criminal justice system. I believe the testimony that came out of the Advisory Commission when this was first brought up was that it was better to have the justices removed. That is not to say that there is anything wrong with the current Pardons Board, but there are times when it is difficult for them to get a quorum. Meetings are very often a full day or two. I have even heard of it going three days when they consider community cases. It is quite a challenge for that group of people to get together and devote that much time for this.

Senator Parks:

The question is, What is broken? What is broken is that last year the Pardons Board only met once. In years past, until 1967, we went from three members of the Supreme Court to five members, then we went to seven members in 1997. It was much easier in years past to assemble a Pardons Board. Today, with everyone's schedule, sometimes it turns out to be almost impossible to get nine elected members to carve out three days of their time. In recent years, when we had the downturn in the economy, regrettably we did not fill some of the positions that were needed to prepare the source and background material for the Pardons Board hearings. In the last couple of years we have filled those.

THE SEVENTY-SECOND DAY

CARSON CITY (Tuesday), April 18, 2017

Assembly called to order at 12:07 p.m.

Mr. Speaker presiding.

Roll called.

All present except Assemblyman Carrillo, who was excused.

Prayer by the Chaplain, Captain Leslie Cyr.

Dear Lord, we thank You for this day. We thank You for our great country, for our great state, and for the liberties we thrive in. I pray now over this Assembly and for their tasks; God, we ask for Your divine guidance in the governing of this state and in all that will be discussed here today. We ask for clarity where issues are not clear and for wisdom to be righteous in the pursuit of liberty and justice.

We ask for Your grace to be with the Assemblymen and women and their families as we are thankful for their service and their personal sacrifices. May Your favor rest on them and their loved ones. Furthermore, let Your favor rest on Nevada and bless us, Lord, with unity and peace. In Jesus name we pray.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Commerce and Labor, to which were referred Assembly Bills Nos. 35, 61, 150, 190, 244, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

IRENE BUSTAMANTE ADAMS, *Chair*

Mr. Speaker:

Your Committee on Corrections, Parole, and Probation, to which were referred Assembly Bills Nos. 26, 286, 316, 326, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JAMES OHRENSCHALL, *Chair*

Mr. Speaker:

Your Committee on Education, to which was referred Assembly Bill No. 117, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Education, to which was referred Assembly Bill No. 202, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Education, to which was referred Assembly Bill No. 372, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

TYRONE THOMPSON, *Chair*
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Mr. Speaker:

Your Committee on Government Affairs, to which were referred Assembly Bills Nos. 383, 437, 477, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Government Affairs, to which was referred Assembly Bill No. 169, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Government Affairs, to which was referred Assembly Bill No. 246, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Government Affairs, to which was referred Assembly Bill No. 310, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

EDGAR FLORES, *Chair*

Mr. Speaker:

Your Committee on Health and Human Services, to which were referred Assembly Bills Nos. 304, 347, 427; Assembly Joint Resolution No. 9, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Health and Human Services, to which was referred Assembly Bill No. 366, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MICHAEL C. SPRINKLE, *Chair*

Mr. Speaker:

Your Committee on Judiciary, to which were referred Assembly Bills Nos. 232, 235, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

STEVE YEAGER, *Chair*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, April 17, 2017

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Senate Bills Nos. 39, 55, 163, 258, 279, 283, 313, 318, 326, 388, 412, 422; Senate Joint Resolution No. 17 of the 78th Session.

Also, I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bills Nos. 2, 12, 19, 26, 27, 31, 40, 41, 51, 53, 60, 75, 76, 118, 119, 125, 127, 128, 130, 138, 141, 149, 159, 160, 165, 171, 176, 206, 237, 242, 251, 312.

SHERRY RODRIGUEZ

Assistant Secretary of the Senate

MOTIONS, RESOLUTIONS AND NOTICES

Senate Joint Resolution No. 17 of the 78th Session.

Assemblywoman Benitez-Thompson moved that the resolution be referred to the Committee on Legislative Operations and Elections.

Motion carried.

NOTICE OF EXEMPTION

April 18, 2017

The Fiscal Analysis Division, pursuant to Joint Standing Rule 14.6, has determined the eligibility for exemption of: Senate Bills Nos. 465 and 517.

MARK KRMPOTIC

Fiscal Analysis Division

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Ninth Session
May 9, 2017**

The Committee on Legislative Operations and Elections was called to order by Chairwoman Olivia Diaz at 1:34 p.m. on Tuesday, May 9, 2017, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Olivia Diaz, Chairwoman
Assemblyman Nelson Araujo, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Skip Daly
Assemblyman John Hambrick
Assemblyman Ira Hansen
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman James Ohrenschall
Assemblyman James Oscarson

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senate District No. 17
Senator Nicole J. Cannizzaro, Senate District No. 6
Senator Michael Roberson, Senate District No. 20



Assemblyman Hansen:

It sounds great. Have any of the smaller counties approached you about it other than through NACO [Nevada Association of Counties]?

Senator Cannizzaro:

This bill came as a result of my pre-session meetings with some of the election clerks in some of the smaller counties. Douglas County and Carson City were part of it. We talked about some of the conversations they had with their counterparts in some of the rural counties. This was an overarching theme. Election machinery is becoming out of date. Oftentimes, one of the biggest barriers to that is the ability to pay for those machines. The idea behind this bill, as a result of those conversations with the clerks, is that we would try to facilitate an option in statute that might allow them to replace and maintain voting machines.

Chairwoman Diaz:

Are there any further questions? I do not see any. We will go to testimony in support of S.B. 491 (R1).

Susan Merriwether, Clerk-Recorder, Carson City:

The clerks are all in favor of this bill. The rural counties are facing struggles with the replacement of their software. I believe money is a little bit tight right now for them to update. I think that providing this benefit to their finances will help assist them with purchasing the equipment if the state funds do not come in fully.

Dena Abeyta, Chief Deputy Clerk and Election Administrator, Douglas County:

We are in support of this bill. Sue Merriwether has been nominated by all the rural clerks to represent them. As part of a team, we have been meeting quite frequently, and Senator Cannizzaro has been a pleasure to work with. She has heard our concerns. We hope this bill passes.

Chairwoman Diaz:

Is there any further testimony in support? Seeing none, we will go to opposition. Seeing none, we will go to neutral. Seeing none, does Senator Cannizzaro have any closing remarks?

Senator Cannizzaro:

I will close with saying thank you. Let me know if there are additional questions.

Chairwoman Diaz:

With that, we will close the hearing on Senate Bill 491 (1st Reprint). I will now open the hearing on Senate Joint Resolution 17 of the 78th Session, which is a proposal to amend the *Nevada Constitution* to include the rights of victims of crime. Senator Roberson is here to present the resolution.

Senate Joint Resolution 17: Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Senator Michael Roberson, Senate District No. 20:

I am here to present Senate Joint Resolution 17 of the 78th Session, also known as Marsy's Law. It provides an expanded list of much-needed and long overdue enforceable constitutional rights to victims of crime. As members of the Assembly Committee on Legislative Operations and Elections, you are probably aware of existing constitutional provisions requiring Nevada law to provide some rights to the victims of crime. Portions of *Nevada Revised Statutes* (NRS) Chapter 178 set forth a number of protections for crime victims and witnesses. However, more needs to be done out of respect for those who suffer daily due to the effects of crime to ensure their voices are heard and their needs are recognized.

When crime victims have specific and enforceable constitutional rights, they are simply better served. Senate Joint Resolution 17 of the 78th Session will do just that. Marsy's Law is named after Marsalee "Marsy" Nicholas, a beautiful, vibrant University of California, Santa Barbara student who was stalked and killed by her ex-boyfriend in 1983. Only a week after Marsy was murdered, her family walked into a grocery store after visiting Marsy's grave. They were confronted by the accused murderer. They had no idea there had been a bail hearing or that the result of that hearing was his release. Marsy's killer was eventually convicted of murder and spent the rest of his years behind bars. The process that her family had been thrust into left them feeling hurt and re-victimized.

Their story is typical of the pain and suffering those family members of murder victims have endured. They were not informed because the courts and law enforcement, though well-meaning, had no obligation to keep them informed at the time. In 2014, Illinois passed a similar version of enforceable constitutional rights for crime victims. In 2016, North Dakota, South Dakota, and Montana passed them as well. In all of these states, Marsy's Law received broad bipartisan support and passed with overwhelming majorities on the ballot.

Last session, we worked hard to ensure that Senate Joint Resolution 17 of the 78th Session best-served Nevada and its crime victims. What the Committee has before it is the work product of months of collaboration. This collaboration included legislators on both sides of the aisle in both the Senate and the Assembly. It included district attorneys, public defenders, judges, victim advocates, the entire law enforcement community, and anyone else who was willing to come to the table.

In order for Senate Joint Resolution 17 of the 78th Session to qualify for the 2018 ballot, it must go through this session unamended. I truly believe this collaborative process led to a better resolution and has given way to the broad support we enjoy today. Paul Cassell, a professor at the S.J. Quinney College of Law at the University of Utah, is here to walk the Committee through some of the more technical aspects of the bill and answer any of your

specific legal questions. Professor Cassell is a former federal judge and has a history of over twenty years of advocating for victims' rights.

For now, I will give the Committee a brief highlight of what this resolution does. Among other rights, Senate Joint Resolution 17 of the 78th Session would give victims the right to be treated with fairness and respect throughout the criminal justice process; the right to be reasonably protected from the defendant and persons acting on behalf of the defendant; the right to be heard at critical stages of the trial; and the right to be notified of their rights as crime victims in Nevada. This resolution will give Nevada's crime victims equal rights, which is something I hope we can all support. The Committee will now hear from victims' rights experts, crime victims, victim advocates, members of the law enforcement community, and other supporters of Senate Joint Resolution 17 of the 78th Session.

William C. Horne, representing Marsy's Law for All, Las Vegas, Nevada:

Marsy's Law is a nationwide, Nevada-based effort advocating for the rights of crime victims. We are very fortunate to have individual supporters throughout the state, as well as 25 organizations representing advocates, law enforcement, labor organizations, and business groups. While our legislative intent is a focus on victims, we in no way want to infringe on the guaranteed constitutional rights of those who are accused or convicted of crimes. Rights of the accused are essential to the impartial operation of the criminal justice system. I was a criminal defense attorney, so I take these constitutional protections very seriously. With that said, we also believe that equitable protections for victims of crime are essential to the criminal justice process. Our request to this Committee is straightforward. We simply ask that the voters of Nevada be allowed to consider the protections for crime victims contained within Senate Joint Resolution 17 of the 78th Session.

To depart from my comments, I noticed some of the exhibits that were submitted by the public defender's office. As a former criminal defense attorney, one of the things that bugs me is when there is a client who has a police contact or is accused of a crime. The press will articulate the criminal history whether or not it is relevant to the particular situation. What is even more incensing is when I watch the news and there is a victim who has been killed or injured, the first thing people talk about is the criminal history of the victim. In this case, they have set out to highlight some accusations of Marsy's brother, who started this campaign. Senate Joint Resolution 17 of the 78th Session is about victims' rights and their protections in the *Nevada Constitution*. I do not know what the alleged criminal history of Mr. Nicholas has to do with protecting our victims in Nevada. I find it offensive, and the public defenders find it offensive when they are representing clients.

Chairwoman Diaz:

Just so that we make sure we stick to the policy, hopefully we can continue to articulate what the policy encompasses. I do not want to hear about how parties on either side of the aisle feel about their stances. I want to hear about the policy considerations the Committee is hearing by considering Senate Joint Resolution 17 of the 78th Session today. I want to stick to the content of the bill.

William Horne:

That is why I said my remarks. I do not believe that these handouts have anything to do with the bill. I would like to focus on the merits of Senate Joint Resolution 17 of the 78th Session as well. Clark County District Attorney Steve Wolfson is down south. I believe County Commissioner Marilyn Kirkpatrick is supposed to be there. She has not arrived yet. To my far left are former federal judge and Professor Paul Cassell from the S.J. Quinney College of Law, University of Utah.

Chairwoman Diaz:

We will go to District Attorney Steve Wolfson in Las Vegas.

Steven Wolfson, District Attorney, Clark County District Attorney's Office:

I have been involved in the criminal justice system in Nevada for close to 37 years. From the beginning of my career when I was a young prosecutor, my priority was helping victims and seeking justice. Even during my years as a defense lawyer, I was sensitive to the fact that the respectful treatment of victims during the handling of cases was important. Today, as the chief prosecutor for the largest county in Nevada, I am always concerned about victims' rights, and I take an active role in meeting with victims and their families on a regular basis.

I am going to veer from my notes to tell the Committee a short story. There was a horrendous double-murder in Las Vegas about two weeks ago. A man took a samurai-type sword, as was described by the eyewitnesses, and savagely murdered two totally innocent men on a random basis. That left two grieving widows. One of those widows happened to be a friend of a family member who reached out to me and asked if I would sit down with this woman to answer questions. I do this on a regular basis. I think it is my duty to sit down with victims and provide information. That is where I am going with this point. This lady came in. She is the mother of three adult children who now have to suffer the loss of their loved one. What she wanted more than anything was two things: she wanted information about the man who murdered her husband and about the case; and she wanted notifications and an ability to participate with dignity in the case.

In my experience, that is what victims want. They want to be able to participate. They want to be able to receive information about their cases and be treated with respect and dignity. I think that is the heart and soul of Marsy's Law. My office sees nearly 60,000 cases each year. It is easy for victims to become just a name in the documents and for their families to be left out of the conversation. That is not how it should be, and we can change that with Marsy's Law. This victims' bill of rights will further provide victims with information that will help them endure the frustrating and frightening process of being an integral part of a criminal prosecution. Anything we can do to ensure victims do not suffer further victimization is critical to their healing and ability to feel closure in their case. This is our duty. They need to know that they will be kept informed and that their voices matter.

Marsy's Law protects victims and guarantees their voices will be heard. Changing the *Nevada Constitution* is not something that should be taken lightly. However, making sure

that victims have as many rights as criminals is the best reason I can think of to make a change. What better way to let everyone know how important the protection of victims' rights is in our justice system than to spell it out in the *Nevada Constitution*. Let us get this to the constituents. Let us give the voters the opportunity to help us further protect victims of crimes.

I will close with these remarks. I began my career as a prosecutor, but then I was a defense lawyer for 25 years before I became the Clark County District Attorney. I have experienced both sides of the system. A common thing for victims is that they want to be treated with respect. They want to be on equal footing with the accused, and they want to have a bill of rights that will expand the list of rights they already have.

Paul G. Cassell, Ronald N. Boyce Presidential Professor of Criminal Law, S.J. Quinney College of Law, University of Utah:

I am a law professor at the S.J. Quinney College of Law, University of Utah. I am pleased to be here today to testify in support of Senate Joint Resolution 17 of the 78th Session. I know this is the second session in which it has been in front of the Nevada Legislature. It is an effort to update Nevada's existing constitutional protections to make them more state of the art.

Let me give the Committee a bit of background about my ability to testify as to the importance of state constitutional amendments. I graduated from Stanford Law School, clerked on the United States Court of Appeals for the District of Columbia Circuit and then on the U.S. Supreme Court for Chief Justice Warren E. Burger. I worked for two years in the U.S. Department of Justice in Washington, D.C., and then served for four years as a federal prosecutor. I then went back west and have been teaching law since 1992 at the University of Utah. In 2002, I became a federal judge, and I served for over five years in Utah where I had a chance to work with the Crime Victims' Rights Act, which had a lot of the same language that is contained in Senate Joint Resolution 17 of the 78th Session.

I resigned my position in 2007 because I wanted to go back to what I am passionate about: doing pro bono work for crime victims around the country. I have argued for victims all over the United States. I have even argued a case in the U.S. Supreme Court for Amy, a young victim of child pornography. I am the coauthor of *Victims in Criminal Procedure*. It is the only law school casebook on crime victims' rights. That is the background that I bring when I testify here today.

I think it might be useful for members of this Committee to know where Senate Joint Resolution 17 of the 78th Session comes from. What is the big picture here? This may be too much of a law professor's take on some of these things. Going back 200 years, it is interesting to look at how our criminal justice system first started. It was essentially a system of private prosecution. If a rancher's cow was stolen, the rancher would be responsible for apprehending the thief, taking the case through the process, and even serving as his own prosecutor. In that system, the victims were very much the center of the process. Restitution and other victim-centered outcomes were what the system was about.

As our country became more developed, large urban areas began to develop the idea that someone having self-help and going out to capture the bad guy on their own did not work. You needed police forces, prosecution agencies such as District Attorney Wolfson's, and others that developed. As those public agencies developed, victims were pushed more to the side. Around the 1960s and 1970s, America woke up and said, "Wait a minute. We have pushed victims completely off to the side of our criminal justice system."

It is interesting to look at some of the first voices that recognized that problem. I think the Women's Rights Movement was one of the first. They would look at rape cases, and they would see prior sexual history being brought in about a woman being raped that had nothing to do with the case, so they urged changes. The Civil Rights Movement was concerned about violence directed against minorities that was not being effectively prosecuted, so they began to speak on behalf of victims. That first became something that was nationally recognized. One of the dates that is prominently highlighted by the Modern Crime Victims' Rights Movement is 1982, when the President created the President's Task Force on the Victims of Crime. They concluded that our criminal justice system had lost an essential balance. The system deprived the innocent, the honest, and the helpless of its protection. They recommended a series of reforms for the state and the federal criminal justice systems, including a federal constitutional amendment that would protect victims' rights.

Defendants have rights in the *U.S. Constitution*, as they should, but there is nothing in there for victims. The Crime Victims' Rights Movement then said, "Passing a federal amendment is a daunting task. We just cannot run out and do that. Let us go to the states, put in place appropriate state amendments, and see how that works. That will make the case for going to a federal amendment." Rhode Island was the first state in 1986, Michigan was in 1988, and more and more states continued to pass constitutional amendments. In 1996, the voters in Nevada overwhelmingly passed its constitutional amendment. Thirty-five states passed what I would call "first-generation" constitutional amendments. They were based on the best information that existed. For example, Nevada passed one in 1996 to try to protect victims.

As things were investigated, a number of people began to realize that the first generation of amendments was not enough to do the job. In fact, going back to 1996, President Bill Clinton said that we needed a federal amendment, because the states were not quite providing victims with what they needed. In 1997, Attorney General Janet Reno said that while the state provisions were useful, they had not gone far enough and had failed to fully safeguard victims' rights.

In 2004, an effort was made on a bipartisan basis to amend the *U.S. Constitution*. There was a majority support for that in both the U.S. House of Representatives and the U.S. Senate. However, to amend the *U.S. Constitution*, there has to be a two-thirds majority in both the House and the Senate. Those days, like today, in Washington, D.C., it is very difficult to get two-thirds of people to agree on anything. In 2004, the federal government passed a Crime Victims' Rights Act. They said, "Alright, let's pass this statute now, and let's see how we can move forward." The Crime Victims' Rights Movement said at that point, "All right, let's move forward. Let's go back to the states, and let's take some of these

first-generation constitutional amendments that, while well-intentioned, didn't go far enough and did not provide a complete protection for crime victims." In 2008, California became the first state to pass what I would call a "second-generation" amendment. In 2014, Illinois became the next state. North Dakota, South Dakota, and Montana have done that already. In 2018, Oklahoma is going to have an amendment on its ballot. These are both red and blue states. This is not something that is done on a partisan basis; this is something that is done because it is simply the right thing to do.

Some members of the Committee may know Professor Laurence Tribe from Harvard Law School. He and I wrote an article together talking about why we need to put victims' rights in the *U.S. Constitution*. I said that within these are rights not to be victimized again through the process by which government officials prosecute, punish, and release accused or convicted offenders. These are the very kinds of rights with which the *U.S. Constitution* is typically and properly concerned: the rights of individuals to participate in all the governmental processes that strongly affect their lives.

Why should there be victims' rights in the *Nevada Constitution*? The people of Nevada have already decided that they should be there. In 1996, 74 percent of the electorate put victims' rights into the *Nevada Constitution*. However, we have learned some things in the last 20 years. When I look at the very short list of rights in the *Nevada Constitution*, I see a number of gaps, oversights, and things that are missing. I know that the people in Nevada who worked on Senate Joint Resolution 17 of the 78th Session came to the same conclusion.

Nevada's amendment back in 1996 was state of the art. It is no longer state of the art, and Senate Joint Resolution 17 of the 78th Session is a chance to make Nevada's protections for crime victims state of the art once again. It includes a long list of different rights, and I would be happy to talk about the language in each of them. I have worked with language like this when I was a federal judge. It draws on language from other states and from the federal Victims of Crimes Act of 1984, but people in Nevada have worked very carefully to craft the language so it fits comfortably with Nevada's criminal justice system. It has been endorsed by the Nevada District Attorneys Association, and we just heard the district attorney from Nevada's largest county say that this can be effectively implemented in Clark County. It has been endorsed by the Nevada Office of the Attorney General and the Nevada Sheriffs' and Chiefs' Association, which handles things from a law enforcement point of view. It provides carefully crafted language.

Let me take one more minute to address some of the objections that have been raised. I picked up a flier that says that this will lead to lawsuits against police officers and prosecutors. I am sure that came as news to District Attorney Wolfson, because he has looked at the language and does not see that being a problem. The people who are raising these objections misunderstand the way these constitutional provisions work. These provisions provide standing for crime victims to say, "Wait a minute. I have a right here. I want to be heard on this." They are entitled to enforce their rights, not to file distracting lawsuits. If you go to Nevada's neighboring state of Arizona where something like this has

been in place for 20 years, talk to Bill Montgomery, the District Attorney for Maricopa County in the Phoenix area. He will tell you that they have not had any problems like this. I read that this would get rid of dispassionate justice in Nevada. That objection makes no sense whatsoever. This proposed amendment would give a voice to victims, but not a veto. They can express their point of view. Sometimes the judge will agree with them, and sometimes the judge will not. This does not change anything about dispassionate justice. It simply provides more voices and more information for judges and others to make appropriate decisions.

I read that this would somehow limit the ability of prosecutors to present a plea bargain. That is not true at all. This simply requires that victims have the opportunity to confer with prosecutors so they can provide their point of view. The prosecutor still makes the final decision about what to do, but that final decision will be informed from having heard from people who have been dramatically affected by these crimes.

Finally, we are asked who knows what this definition of victim means. I know what it means, because I was a federal judge for five and a half years. For five and a half years, I applied exactly that same definition, which is found in the Victims of Crime Act 18 U.S.C. § 3663; it is found in the Mandatory Victim Restitution Act 18 U.S.C. § 3663A; and it is found in the Crime Victims' Rights Act 18 U.S.C. § 3771. It requires that someone be directly and proximately harmed. In 99 percent of cases, there is not even going to be a debate. A woman who has been raped is a victim. A robbery victim is a victim. It is not that difficult to figure out.

I urge you to pass Senate Joint Resolution 17 of the 78th Session. Send it on to the voters of Nevada. People can debate whether they think it is a good or bad idea. At the end of the day, all Senate Joint Resolution 17 of the 78th Session does is allow the voters in Nevada to make the decision.

Chairwoman Diaz:

I am going to open it up to questions from the Committee. Assemblyman Anderson has a question for District Attorney Wolfson.

Assemblyman Elliot T. Anderson:

I wanted to ask you a question on Section 23, subsection 1, paragraph (e) of the proposed amendment. It talks about refusing interviews or deposition requests. Do you interpret that section to still allow you to do material witness warrants if you have a victim? One of the reasons I supported you on Assembly Bill 193 of the 78th Session was that sometimes there is an inability to move forward with witnesses who are a bit more vulnerable and afraid to come up and speak. When I read that section, I started thinking about that. Do you interpret that to get rid of your ability to do those material witness warrants?

Steven Wolfson:

The simple answer is no. I do not see it as a problem whatsoever.

Assemblyman Elliot T. Anderson:

The other question that I had for District Attorney Wolfson is about what the District Attorney's Office does for victims now. Can you talk about what your office does now, and if you think it is adequate in terms of providing comfort to victims and making sure that their voice is heard?

Steven Wolfson:

When I was a deputy district attorney in the early 1980s, then-District Attorney Bob Miller began his champion efforts at proposing victims' rights. He carried that on all the way through his governorship. We do a pretty good job now at providing a number of these things on our own. We allow victims to provide victim impact statements. We give them, to the best of our ability, notice of proceedings and an opportunity to be heard. Victims provide input to prosecutors for purposes of whether we should plea bargain a case, but they do not control what a prosecutor does. To answer your question, we do some of these things now pretty well, but we could do better. This Senate joint resolution provides a vehicle for us to do even more. Let us allow this debate to occur next year before Nevada's voters. It will be a good debate, but I believe at the end of the day, the voters will be convinced that this will be a good thing, as it expands even more rights for our victims.

Assemblyman Elliot T. Anderson:

As you read the proposed resolution, what do you interpret this to require that you are not doing now? What will this constitutional amendment force you to do that you are not doing?

Steven Wolfson:

I do not think we provide status updates on cases as well as we could. We have thousands of cases—misdemeanors, gross misdemeanors, and felonies. I have a couple of women in the front of my office who handle hundreds of phone calls on a daily basis, because people want to know the status of their case. I do not think we do a good enough job on that. Most of the people I come into contact with crave information. Once they receive information about the case they are concerned about, they feel better. They feel more relaxed. They feel informed. I think we could do a better job at providing status updates on cases.

Victims want to be present at critical court proceedings. I have victim advocates in my office who do a good job at providing information, but there are many victims out there who do not learn about the critical hearings. I think we could do a better job, and I think Marsy's Law will require us to do a better job at providing information regarding critical court proceedings. I think we can improve on a number of the other things that are located in this Senate joint resolution.

Let me say one more thing. When I was first approached and asked to support this bill, I had some reservations. I then read the bill closely, and there are words throughout this bill, such as "reasonable notice," "reasonably hurt," and "to be informed upon request." Not every victim cares. Not every victim makes a specific request for information. I believe this law provides prosecutors with discretion and the ability to provide information, upon request, to victims.

Assemblyman Elliot T. Anderson:

Mr. Wolfson, are you familiar with the bail factors that we use now in terms of the factors that we have? We are doing some experiments with objective, evidence-based bail. Are you familiar with those factors?

Steven Wolfson:

Absolutely. I have been familiar with them for many years.

Assemblyman Elliot T. Anderson:

One of the factors, as you know, is to take the safety of the community into account already. Do you interpret Section 23, subsection 1, paragraph (c) of the proposed text to require anything additional to what is required pursuant to NRS 178?

Steven Wolfson:

I do not know that it requires us to do anything more, but I think it makes it more important for consideration for the difficult decisions that our judges have to make concerning bail. If this is part of the *Nevada Constitution*, the judges have to consider the safety of the victim and the victim's family. I think it will make the judges think even more carefully about that factor, among all of the other factors, when determining whether to set bail or to detain an individual.

Assemblyman Elliot T. Anderson:

The other question I had was in regards to reigning material. The *U.S. Constitution* would supersede the *Nevada Constitution* in terms of rights that are derived from the *U.S. Constitution*. I wanted to check in terms of how you think the interplay will be between the provisions of this resolution that require confidentiality when it might abut against exculpatory information. Can you comment on how you think your obligation will or will not change? Could it be potentially more difficult to make sure that exculpatory information is provided?

Steven Wolfson:

You ask such challenging questions. I do not think anything in this law, should it become part of the *Nevada Constitution*, will affect our obligations under *Brady v. Maryland* [373 U.S. 83 (1963)] and *Giglio v. United States* [405 U.S. 150 (1972)]. Those are such important requirements. All of the prosecutors in my office take the *Brady* requirement to provide exculpatory information very seriously. If there is a conflict, we will side on the side of our constitutional requirements and our requirements under *Brady*. I do not think anything in this bill is going to affect our obligations under *Brady*.

Assemblyman Elliot T. Anderson:

I have one last question. Whoever is on the panel can answer this one. I think that this is something that everyone can understand. Those other questions were more focused on the prosecutor's office. I would think at some level that being in court is intimidating, period. When I read Section 23, subsection 1, paragraph (a) of the proposed amendment, it says, "...to be free from intimidation." Is that not a subjective thing that is hard to really

understand? If I am in court, even as a witness or someone at a hearing, it can be intimidating. I am sure Mr. Cassell has seen many people who are scared to be there. Can we really protect people from being intimidated in court? It is something that is felt; it is not something objective. A bunch of people in suits and ties asking hard questions about difficult subjects, just by its nature, can be really intimidating. Can we really protect people from being intimidated?

Paul Cassell:

Can we prevent all forms of what might be broadly construed to be intimidation in the criminal justice process? No. People may be nervous when they are testifying. I think you made that point very accurately. However, there are different kinds of intimidation. Someone is intimidating someone by threatening them or sending them threatening communications. That is what I believe Senate Joint Resolution 17 of the 78th Session is aimed at.

You raise the question of what is going to happen once this language is put into the *Nevada Constitution*. You can look across the border to the west. California has had language like that now for about 9 years; Arizona has had language like that for 22 years. There have not been these kinds of problems. There has been, instead, an ability for courts to say, "Wait a minute. If this is going to be intimidating in an unreasonable way, I am going to restructure my proceedings to be fair to defendants, but fair to victims as well." District Attorney Wolfson gave a good analogy when he said that this is going to provide tools. It is going to provide tools for the district attorney's office in Clark County. It is going to provide tools for judges all across the state to try to make sure that victims are not unfairly intimidated, which is what Senate Joint Resolution 17 of the 78th Session would target.

Assemblyman Elliot T. Anderson:

Where my hesitation comes from is that it takes a long time to change the *Nevada Constitution*. Had this been put into statute, I would have no problems. My whole session has been taking things out of the *Nevada Constitution* for the reason that we cannot always adapt as quickly as necessary if there are unintended consequences. It is not that I am afraid of any of this, but we need to have a good record if we are proposing to put it into the *Nevada Constitution*. There are many cases day to day that are going to be affected by this language, and the court is going to be searching for meaning to all these provisions.

Assemblyman Daly:

I appreciate the professor giving the Committee some of the history of the evolution of our prosecution system. I am reminded that part of our criminal justice system and the evolution we have come to is not all about punishment anymore. There is an element of that, but also it is about rehabilitation. We call the prison system the Department of Corrections. There is an effort to have some rehabilitation and get people back into society as well. In subsection 1, paragraph (l), it talks about how now people have the constitutional right "To full and timely restitution." I am not opposed to people getting their restitution, but I also know that you cannot get blood out of a turnip. I also know that this session the Assembly Committee on Judiciary passed some rules and laws that said that if a person is meeting everything else he

needs to do to get out or to get a job but has not been able to pay restitution, that should not be a barrier to him getting out and being a productive part of society. When looking at subsection 2 of Section 23, victims have a standing to come and say, "I need my money or my restitution. I want my pound of flesh." I do not know if that is going to mesh very well with the corrections and rehabilitation part that we are trying to do with that language.

Paul Cassell:

It is an excellent question, and I think it has a very straightforward answer. This constitutional provision gives a victim a right to an order of full restitution. There are going to be cases where a defendant takes a million dollars from someone, and it is just not feasible to ever pay that back. What the judge would do in that situation is order the defendant to pay one million dollars. That can be recorded as a judgment in case the defendant wins the lottery or something like that. The second thing the judge does is set up a payment schedule of \$100 a month, or whatever it may be. I agree with you, and I think District Attorney Wolfson can chime in as well about Nevada procedures.

I will give you my perspective from other states and the federal system. This does not say that if someone has not paid their restitution, they are going to be locked up. When I was a judge, I had cases where victims could come in and say, "Look, don't lock this fellow up. Put him on work release or something like that, so he can continue to pay restitution." I think sometimes people hear victims' rights, and they say, "This is a ploy for the law and order people to lock people up." One of the things that I think is important to understand is that there are going to be some victims who want to lock people up, and there are going to be some people who want to let them go. This is not about making sentences longer or shorter. It is about making them based on full information. A judge ought to know what someone has lost when deciding whether to award restitution. That is all this would do.

Assemblywoman Monroe-Moreno:

After working years in law enforcement, I have seen both sides of this issue. The word "reasonably" is used in this language over and over again. Who is going to determine what is reasonable for time? Would that be the victim, the district attorney's office, or the judge? Who determines the reasonable timing?

Paul Cassell:

I was a judge, and under the Crime Victims' Rights Act in federal law, there were many of the same reasonable notice requirements. At the end of the day, it is ultimately going to be up to a judge if there is some kind of dispute. That is how disputes are settled in the criminal justice system. In the first instance, there are some provisions here for reasonable notice. I think that is a direction for District Attorney Wolfson and his colleagues around the state to say, "In these circumstances, what is a reasonable way to provide notice? We need to do what we can in the district attorney's office to be reasonable and fair." They will make the decision in the first instance. If a victim does not think that is fair and wants a neutral decision maker to decide, they have standing to go in front of the judge and have the judge make a final decision.

Kevin Powers, Committee Counsel:

The Legislative Counsel Bureau Legal Division is a nonpartisan legal agency. We do not support or oppose any particular piece of legislation, viewpoint or policy. However, we provide the Legislature and its committees and members with objective legal analysis and advice.

With regard to the term "reasonable," it is legal standard that generally means what an objective, reasonable person would consider to be necessary and appropriate based upon all the facts and circumstances of the case. For example, this constitutional provision provides victims' rights in both misdemeanor cases and felony cases. What would be considered reasonable notice or reasonable participation by the witness would be governed by the nature of that crime. The standards for the victim and what they are entitled to in a misdemeanor case would generally be different compared to the felony case. It would be an objective standard, not subjective to the victim or the person who is making the initial decision, and ultimately the court. It would be an objective, reasonable standard.

I agree with Mr. Cassell that the initial determination would be made either by the prosecuting attorney, if that is the issue that is involved, or the law enforcement agency. If a victim disagreed with that determination of reasonableness, then the victim would have the right to go to court and have the judge make that determination. When a court makes a determination based on reasonableness, that is the standard the court uses in very many contexts. The courts are often charged with making the determination of what would be an objective, reasonable person, and what they would consider reasonable, necessary, and appropriate under the facts of the case.

Assemblywoman Monroe-Moreno:

Section 23, subsection 7, says that a victim means a person who is directly affected, but you extend what a victim is. Who is included in that statement?

Paul Cassell:

This is an area where I can speak with a little bit of authority. With regard to the phrase "any person who is directly and proximately harmed," there were three laws that I worked with very often when I was a federal judge that used exactly the same language. Lawyers immediately have an understanding of what the word "directly" means and what the word "proximately" means. Directly means, what we would call as lawyers, "but for" causation. If this had not happened, then this would not have happened. This is a simple illustration: I had \$100 in my wallet, and a robber took it. I have been directly harmed by that, because if he had not robbed me, I would have had the \$100.

What about that word "proximate?" That is a lawyer term for "reasonable." You might be able to trace out a series of events and say, "Look, if this hadn't happened, then this would not have, and so on and so forth." At some point, we say, "Well, that isn't a proximate harm. That is an indirect or attenuated harm." This simply says that we are going to cut off the

chain of events at some reasonable level. In 99 percent of the cases, there is not even going to be a debate. It is going to be straightforward as to who was directly and proximately harmed. In 1 percent of cases, ultimately, the judge would make the decision if there was a debate.

Assemblywoman Monroe-Moreno:

What is reasonable to me is not reasonable to him or her. That might be an issue that would come forward. If there is a crime committed, I could see the mom, dad, sisters, and brothers being victims. If a crime is committed, and there are people outside that witness the crime, could they also be included as victims?

Paul Cassell:

Witnessing a crime can be a very traumatic event, but that is not the kind of thing that creates rights under this amendment. There has to be direct and proximate harm. A judge might say, "I want to hear from some of those other people, because they will provide useful information to me in making a decision." However, they do not have rights under this amendment.

Assemblywoman Bilbray-Axelrod:

With the current volume of cases you have right now, are you going to have to hire more people in order to do what this is asking you to do?

Steven Wolfson:

We do much of this now. I have a victim advocate and a victim witness division of my office where I have 20 or so employees who do many of these things right now. I think only time will tell. If I need to add a couple of victim advocates or increase or improve a process to better inform people, we will do it. We do so much of this now that it is not going to be an extremely different mandate put on my office.

Assemblyman Ohrenschall:

My question has to do with subsection 4 on page 3 where it says, "A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto." I keep thinking of a scenario. Let us say that I open a business with my best friend. Things go south, and our business fails. In closing up the business, I find that I believe my best friend has embezzled money, and that was a cause of the business failing. I go to the police or the district attorney's office, and they tell me, "Sorry your business failed. This is a civil matter. We suggest you hire a civil attorney and go after your former business partner." Given the language in subsection 4 about how a person who feels aggrieved may maintain an action to compel a public officer, do you anticipate that there could be litigation that might affect your prosecutorial discretion? Maybe someone believes they are a victim, but one of your prosecutors does not believe the case is winnable, has enough evidence, or believes it is a civil matter. There may be litigation that is going to come from that aggrieved person who believes that criminal charges should be pursued, but they are not being pursued. Can anyone discuss that?

Steven Wolfson:

I would be glad to address that. I do not believe any part of subsection 4 affects a prosecutor's discretion to bring a charge. We have total and complete discretion to determine whether to file charges against someone or not. I do not think subsection 4 applies to the prosecutorial decision on whether to bring a charge. The language in subsection 4 talks about ". . . an action to compel a public officer or employee to carry out any duty required by this section" I do not think this law addresses the prosecutor's discretion of whether or not to bring a charge.

Paul Cassell:

I would highlight one other thing too. Subsection 2 of Senate Joint Resolution 17 of the 78th Session does not alter the powers, duties, or responsibilities of a prosecuting attorney. A prosecutor has to make the hard decision of whether to file charges. If the prosecutor decides not to file charges, you cannot go in and file some action to say that the prosecutor made the wrong decision.

Assemblyman Ohrenschall:

I appreciate that answer. The way I read it, that was my concern. If a prosecutor decided not to file, someone might disagree with that. They might seek court action on that. I hope that is the way it is interpreted if it passes into law.

Chairwoman Diaz:

Are there any further questions? I do not see any. I will now take testimony in support of Senate Joint Resolution 17 of the 78th Session.

Senator Roberson:

We have a list of proponents. I know Clark County Commissioner Marilyn Kirkpatrick was going to try to be here today. I do not know if she is at the Grant Sawyer Building.

Steven Wolfson:

She is not here.

Senator Roberson:

Let the record reflect that she supports this bill and intended to be here today as a supporter. There are a number of folks here and in Las Vegas. We will have some folks from law enforcement come up now.

Kristin L. Erickson, Chief Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:

We would like to thank Senator Roberson for bringing forth this very important piece of legislation, recognizing victims and all that they go through, and giving them a voice to speak during the confusing criminal justice process. We support this legislation.

Robert Roshack, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We would also like to thank Senator Roberson for bringing this forward, and we totally support this resolution.

Michael Giurlani, President, Nevada State Law Enforcement Officers' Association; and representing Peace Officers Research Association of Nevada; Las Vegas Police Protective Association; and Nevada State Law Enforcement Coalition:

I am a retired state trooper, and I was a trooper for 25 years. Many people do not realize that even in law enforcement, officers are victims of crimes. I was involved in three officer-involved shootings in my career. It is a different perspective when you are standing in the courtroom, even as a police officer, and you are looking at a person who you were exchanging gunfire with a few weeks ago. You are trying to remain composed and show your internal strength to the jury to show that you can do the job and be all that we are in law enforcement. When you are sitting there, and the defendant starts winking at you, blowing you kisses, and throwing gang signs at you, that is a level of intimidation. That is a level of frustration and a level of anger. That kind of stuff is uncalled for. There are many other types of threats.

My first shooting was here in Carson City in 1994 in the Smith's parking lot. I received a death threat from that. The entire summer went by, and I had to keep looking over my shoulder until this case was adjudicated. Subsequently, the members of this gang out of Oakland, California, were brought to justice. We support Marsy's Law. We wholeheartedly support Senate Joint Resolution 17 of the 78th Session.

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers:

Law enforcement is typically the first to encounter the scene. They are the first to encounter the victims. Law enforcement most assuredly supports victims' rights. This resolution is pretty basic. It deals with victim fairness, protection, safety, timely resolution of their cases, communication, and other things. How are we going to oppose that? It is time we put this in the *Nevada Constitution* to provide an open, notorious, and absolutely thoughtful response on behalf of our victims. We need to do that. We need to do that now. You are part of that process. We urge your support for Senate Joint Resolution 17 of the 78th Session.

Kerrie Kramer, representing The Cupcake Girls, Las Vegas, Nevada:

The Cupcake Girls are a resource organization that works to rehabilitate victims of sex trafficking, amongst others. We are in support of any measure that would benefit the victims and their families of sex trafficking, and oftentimes, the domestic violence that accompanies trafficking victims. We are very much in support.

Marlene Lockard, representing Nevada Women's Lobby; and Las Vegas Police Protective Association Civilian Employees:

We support this measure.

Cory Hernandez, representing Tu Casa Latina, Reno, Nevada:

I am here on behalf of the Executive Director of Tu Casa Latina. We are here in support of Senate Joint Resolution 17 of the 78th Session.

Barry Gold, Director, Government Relations, AARP Nevada:

We support this measure.

Austin Slaughter, Legal Assistant, Latin Chamber of Commerce Nevada, Inc.:

The Latin Chamber of Commerce Nevada, Inc. would like to be on the record in support of this measure.

Kelvie Malia Stamm, Private Citizen, Las Vegas, Nevada:

[Ms. Stamm read from prepared testimony, page 11 of (Exhibit C).] I am lucky to be alive. When I met my now-estranged husband while I was a Bible study teacher, I knew that he had a very checkered past, but I thought he was on his way to bettering his life. While working as a traveling notary for the state of Nevada, he began stalking me. He would assume my iCloud account to monitor my calls, texts, emails, and pictures. It got to a point where he would track me on my Find My iPhone app to find out my whereabouts. He was extremely abusive in any manner: verbally, mentally, sexually, physically, and financially.

September 2016 was when my most recent attack happened. I returned home from work to regular verbal harassment and abuse. I lay down and took a nap, only to be woken up by him punching me in my back. From there, he forced me into our truck. While I was sleeping, he was drinking, and he was drunk. While he was drunk, he was swerving all over the road, hitting me, even in our vehicle. He even momentarily left the vehicle at times. He fought strangers in the middle of the road on our travel. He pulled into a drive-through to get food, and this is where I attempted to escape him.

I ran to a nearby church to try to find anyone to help me call the police. He chased me with the truck. At one point, he did not care if he would smash into a concrete wall behind an alley where I had hid from him. He realized I would not stop running and hiding, as I had been trying to leave him for quite some time due to the extent of the traumatic abuse I was suffering. At that point, he attempted to throw me back in the truck. Before he did so, he grabbed me and repeatedly pummeled me in the face with a closed fist. He even fled the scene of the crime. Before doing so, he threatened me, my livelihood, my property, and my children. He told me that I would see him again and he was mine, among other threats. When he fled the scene, he took my purse with my money and keys, leaving me completely helpless. My face was bleeding, and I was throwing up blood. I could barely even speak. I was bedridden in a safe house, and even had injuries to my head. After being arrested two and a half months later, he was finally released on bail. He made bail within less than 19 hours.

At the next hearing, I was intimidated by his army of friends, family, and his attorney. At one point, the defense even tried to cite my lack of immediate attention to file a statement as grounds to drop the case. I did not take immediate action because I was in a safe house.

I had many things to deal with due to the robbery and the abuse. At the arraignment for his warrant for assault with a deadly weapon, he was given intensive supervision and was able to walk the streets with absolutely no restrictions. The next court date, which was supposed to be scheduled for February 7, was cancelled. The defense got a continuance due to a conflict of interest with dates, even though we all knew about these dates for a while.

The same thing happened on April 4. The continuance kept pushing back these courts dates, even though we had known about them for months. There are many sections that would benefit me as far as Senate Joint Resolution 17 of the 78th Session. I look forward to a future of not worrying about my personal safety, my estranged husband, or the army of people he brings to court to intimidate me by whispering things in the hallways, saying slurs to me, and threatening me. Senate Joint Resolution 17 of the 78th Session will also allow me pivotal notifications—things that I deserve and want to know, since I am a part of this integral prosecution process. I also wanted to let all of you know that I do not want to include my personal contact details for fear of future victimization.

Annette Scott, representing SAFE House, Henderson, Nevada:

We are 100 percent in support of Senate Joint Resolution 17 of the 78th Session. As a 20-year advocate, I have worked with every type of victim of crime. Although every case is different, what has always been consistent has been the imbalance that survivors face in the system. As advocates know, the system can re-victimize survivors. Ironically, the system would not exist without crime victims, yet crime victims are left without a voice. By supporting Marsy's Law, you are giving crime victims and their survivors an opportunity to have a greater voice, equality, dignity, and the respect they deserve.

Ed Williams, President, Log Cabin Republicans of Nevada:

Our organization is the oldest and largest representative of conservative lesbian, gay, bisexual, transgender, and queer (LGBTQ) allies and members. We stand in support of Senate Joint Resolution 17 of the 78th Session, as the LGBTQ community and their families are disproportionately affected by crime, particularly violent crime. We stand in support of this measure and encourage the Committee to put this matter before the voters of Nevada.

Liz Ortenburger, Chief Executive Officer, Safe Nest, Las Vegas, Nevada:

I am the Chief Executive Officer for Safe Nest, the largest domestic violence organization in Nevada. We are strongly in support of this bill. We hope it passes for the 43,000 victims we supported last year.

Chairwoman Diaz:

I wanted to thank Ms. Stamm for being brave and sharing her story with us today. Is there any further testimony in support of Senate Joint Resolution 17 of the 78th Session? Before I switch to opposition, Assemblyman Anderson has a question for our legal counsel.

Assemblyman Elliot T. Anderson:

When Assemblyman Ohrenschall asked about subsection 4, where it talks about maintaining an action and prosecutorial discretion, I believe Mr. Cassell pointed out the language in subsection 2. It says, "This section does not alter the powers, duties or responsibilities of a prosecuting attorney." I wanted to check and see if you think that that organization would be a problem. Because it says, "This section" and it is inside of subsection 2. Normally, when I see language like that, it has its own subsection. I believe that Assemblyman Ohrenschall was asking about subsection 4. That language was pointed out in subsection 2. I admit that it does not say rights in that subsection, but I just wanted to get a record on that, and if you could help us understand if that would affect all of Section 23 or just Section 23, subsection 2.

Kevin Powers:

As a standard of drafting, our office uses the term "this section" to refer to the entirety of the section. The reference in subsection 2, "This section does not alter the powers, duties or responsibilities of a prosecuting attorney" refers to all of the proposed Section 23 that would be adopted in the *Nevada Constitution* if approved by the voters. In addition, as a basic rule of statutory and constitutional construction, no provision of a constitutional or statutory section is read in isolation. Instead, all sections must be read together and harmonized. Therefore, the provision for the action to be brought by a person to enforce the rights under that section of the *Nevada Constitution* has to be read in conjunction with subsection 2, where it talks about how it does not alter the powers, duties, and responsibilities of a prosecuting attorney. In essence, subsection 2 acts as an exception to the action that is provided in subsection 4. That action cannot affect the powers, duties, or responsibilities of a prosecuting attorney.

Chairwoman Diaz:

Before I open it up for opposition, I am going to clarify that I will be strict. There should be no reference to anything that is not in the bill. We want to stick to the merits of the bill, and why it is not a good policy decision. I will open it up for testimony in opposition.

John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office:

[Mr. Piro read from a letter (Exhibit D).] It is without question that Marsy and her family, along with the lady who testified today, have experienced incredible tragedies. However, Senate Joint Resolution 17 of the 78th Session is a Trojan horse of problematic and costly constitutional changes that dramatically alter the criminal justice policy in Nevada. In relation to Marsy's family, in particular, it presents this tragic case as justification for a constitutional change. It is not just a law that can be tweaked if unintended consequences result. It changes the *Nevada Constitution*, which cannot easily be tweaked when the billionaire behind this bill leaves us here in Nevada to deal with the consequences of this law. To that end, it is important to note that there have been problems with litigation in California since this law has passed in 2008. Moreover, Montana is getting ready to deal with the fiscal and constitutional impacts. North Dakota has just let the Legislature know that they are

going to need \$2 million to deal with the constitutional mandates that this bill requires (Exhibit E). How this bill does not have a large fiscal note is rather surprising.

It is important to note that Nevada has a top-rated law school with professors and members of the prestigious American Law Institute, yet the professors they bring in are from out of state and do not practice law in Nevada. The other law experts mostly do administrative and transactional work without handling the volume of cases that the people who have their boots on the ground doing this work day in and day out have. It is problematic that Marsy's Law paints the constitutional protections put in place by our country's founders, such as the presumption of innocence, as unjustified technicalities afforded to dangerous rapists, murderers, and child molesters, and conflates the term "victims' right" and "criminal justice."

A victim's participation in the criminal justice system is valuable for dignity, catharsis, and fairness purposes. However, it should not be confused with the constitutional due process protections afforded to criminal defendants and convicts by the founders of our nation and this state. The prosecution, with its immense power, and the people of Nevada are the alleged victim's voice in the criminal justice system. When adjudication has occurred, alleged victims and actual victims of crime have a strong voice in the system.

One of the other problems with Marsy's Law is it capitalizes on the concern and empathy for victims of crime while ignoring the immense fiscal, legal, and policy concerns that will result from its passage.

Finally, Marsy's story and the story of her murderer appear to present a flaw in the bail process. Despite this flaw, Senate Joint Resolution 17 of the 78th Session uses the word "bail" only once, stating that the safety of the victim and the victim's family is to be considered in fixing the amount of bail and release conditions for the defendant. Nevada currently has that in its statutes, and should we need to add an additional notice that a criminal defendant is being released on bail, I think that is an easy statutory fix. It would not be necessary to tinker with the *Nevada Constitution*.

Marsy's Law seeks to put the concerns of an individual accuser above the concerns of our justice system as a whole. Most of the provisions in Senate Joint Resolution 17 of the 78th Session will take effect before an accused is even convicted of a crime, thereby letting the accuser supplant our jury system. In a tough situation like this, I think the words of Alexander Hamilton ring true. He posited that a key function of our representative legislature is to prevent complacency to every sudden breeze of passion of the majority. That means that the Legislature must occasionally ignore the will of a strong, wealthy lobby to protect important legal and constitutional interests that have been in place from the founding of our nation. I think that time is now for Nevada's Legislature as well.

Marsy's Law is a solution in search of a problem. Nevada already has several provisions put in place by this Legislature to protect crime victim safety. No one is trying to lessen those protections. There is no bill on record this session trying to lessen any of those protections. In fact, Mr. Wolfson testified that he wants to do these things, and he does these things

already. Why do we need a constitutional amendment to tell him what to do? That is a management issue that he is saying he can do. Why do we need a law to force him to do these things?

Another problematic issue with Marsy's Law is that it wants to provide alleged victims and accusers standing to compel the police, the prosecutors, and the courts to do certain actions as seen fit by the alleged victim. Thus, it creates a constitutionally protected private right of action for the public to sue law enforcement, prosecutors, and defense attorneys trying to do their jobs on a day-to-day basis.

Marsy's Law ignores the longstanding belief that our court system should be dispassionate when handling court cases. In our justice system, prosecutors must make decisions legitimately founded on complex considerations necessary for the effective and efficient administration of law enforcement without intervention by passionate accusers seeking to intervene while being motivated by personal concerns. Senate Joint Resolution 17 of the 78th Session purports to change Nevada's criminal justice system by granting alleged victims the ability to force public officers to carry out these duties. Moreover, it allows them standing at all hearings. The alleged victim is going to be able to weigh in at every court hearing, even if it is just a simple extension of time. This delays court calendars and procedures.

I think it is important to note that there has been some talk about how the definition of "victim" is not overly broad in this, but it is. The direct and proximate relation makes this extremely broad. I want to give the Committee a clear example. Let us say that there is a Golden Knights game at the T-Mobile Arena. There are 10,000 fans there, and someone moons all the fans in that arena. There are now 10,000 or more alleged victims underneath this law who will be allowed to assert their rights at every hearing and be entitled to get a card. If they do not get what they want out of this statute, they will be allowed to file a court case to compel the actors in the criminal justice system to do certain things. It is an overly broad definition. To say it is not is an unfair representation of the language in the bill.

It allows victims to be involved prior to conviction, and that is usually before a person is even determined to be a victim at all. The criminal justice system functions to ferret out lies and the truth under the rigorous tools of cross-examination and direct examination. This bill is saying that we are going to make a decision that a person is a victim before a conviction even happens.

The real crux of the problem with the law is its constitutional nature. There are many things in this bill that would make good law as a statute. The *Nevada Constitution* is a lasting and guiding document. It was not meant to be changed by out-of-state lobbyists, people who do not even practice law in Nevada, or practitioners who do not have the caseloads that both the public defenders and the district attorneys have in this state. Other states are having problems with this law because constitutions are hard to change. They should be hard to change. We can do a smarter job of criminal justice policy.

Nevada is not the type of state that follows. It is one that leads. The *Nevada Constitution* is sacred. It should not be amended on the whim of a California billionaire and out-of-state law professors who do not practice in Nevada. Other states have fallen prey to this feel-good amendment to their constitutions, and they are paying the price. Let us be measured. Let us be thoughtful. Let us resist the temptation to pass a law solely because it feels good, but rather pass a proper law that is a product of Nevada's best legal minds.

This law was just up for debate in Idaho. Idaho rejected this law in the Idaho House of Representatives, because they saw all the problems that other states are having. Even though the law in Idaho passed out of the Senate unanimously, the Idaho House Committee put a stop to this law. Let us be smart on crime and criminal justice policy while taking the hard stance that Alexander Hamilton advised against the whims of a powerful lobby.

I urge this Committee to vote no on Senate Joint Resolution 17 of the 78th Session. By voting no, you are not voting against victims. You are voting for smart policies not crafted by out-of-town lobby groups backed by a billionaire. What is popular is not always right, and what is right is not always popular. I think Nevada can do better, and I think we can make laws that accomplish this without amending the *Nevada Constitution*. With the fate of the *Nevada Constitution* in your hands, I urge the Committee to vote no on Senate Joint Resolution 17 of the 78th Session. Do not allow this Trojan horse into Nevada.

Sean Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:

[Mr. Sullivan read from written testimony (Exhibit F).] This resolution proposes to elevate the rights of victims by infringing upon the constitutional rights of the accused. Moreover, the rights of victims have already been codified within Nevada law for a number of years; therefore, this resolution is wholly unwarranted and detrimental to criminal justice practice and procedure in Nevada. In fact, these rights are codified within NRS 178.569 through 178.5698. I would invite the Committee to look at these specific sections of the NRS. This section is even titled, "Protection of Victims and Witnesses."

More specifically, the resolution requires that the safety of the victim and the victim's family be considered. That is already done in NRS 178.4853. Within the "Protection of Victims and Witnesses" sections within the NRS, it enumerates rights that this measure seeks to adopt. It talks about the status of a case that the victim or witness may confer. It talks about the intimidation or harassment of the victims or witnesses that we just talked about. It talks about the witnesses' or victims' impounded property, how they can collect witness fees and victim compensation. It even talks about being placed in a secure waiting area at court, so they are not subject to intimidation or harassment. It talks about whether they may receive notice of the release of a defendant before trial and after he or she may be released from prison. Other areas of the NRS also talk about a victim's right to testify at the sentencing. In fact, Nevada codified the fact that a victim has the right to speak last at a sentencing. He or she gets to go after the defendant, as it is his or her right of allocution. They get to have the last word in court, and that is codified and enshrined within our statutes; so too, should the measures that this bill seeks to adopt. We should put this within the "Protection of Victims and Witnesses" codification in NRS 178.569 through 178.5698.

Next, the resolution proposes that a victim should be entitled to be present at all public, criminal, juvenile, and delinquency proceedings that the prosecutor and the defendant are entitled to be present at. If this passes, this will significantly hinder the prosecutor and the defense attorneys from timely adjudicating cases, as it will have the exact opposite effect of what this resolution intends to accomplish. Let me give you an example, speaking from the Washoe County Public Defender's Office viewpoint. The Washoe County Public Defender's Office will meet and confer with a defendant at the jail shortly after arrest, usually within 72 hours, before a lower court magistrate and, at times, with the prosecutor present, to address issues such as initial appearance, custody status, and bail issues. Thereafter, our office will hold a number of pretrial and status conferences, called mandatory status conferences, with the prosecutor at court in an effort to timely resolve cases. I would hazard to guess that 90 percent of the cases are resolved this way in a timely fashion. I would submit to the Committee that both of these instances are critical stages within the criminal justice proceedings for the accused. They may be delayed or hampered if this resolution passes, particularly if a victim asserts his or her right to be present at each proceeding.

In addition, this resolution will allow a victim to assert the timely disposition of a case following the arrest of a defendant. What is their definition of "timely"? Their definition of "timely" may be different from mine, as the defense attorney. Notwithstanding this fact, under the Sixth Amendment of the *U.S. Constitution*, the defendant is afforded a fundamental constitutional right to a speedy trial, and the right to effective assistance of counsel at that trial. This fundamental right will most certainly be infringed upon by the passage of this resolution when the victim asserts that the case is not being disposed of in a timely fashion, irrespective of the defendant's constitutional rights.

Other provisions within this resolution also invade provisions of these important constitutional rights afforded to the defendant by allowing the victim to prevent the disclosure of certain information and records or to allow the victim to refuse to participate in interviews or depositions in preparation for trial. Once again, these provisions should not abrogate the defendant's fixed amendment rights to effective assistance of counsel under the *U.S. Constitution* nor diminish the state's disclosure obligations to the defense. It is critical to note that these provisions may also prevent a prosecutor from seeking a material witness warrant against an alleged victim in a criminal matter if justice so requires.

This is the very reason why my colleague and I have submitted a proposed amendment to Senate Joint Resolution 17 of the 78th Session (Exhibit G). They have not been adopted by any of the proponents or the bill sponsor, and we would hope that this Committee would consider our amendment. The purpose of these amendments is to ensure that nothing abrogates the defendant's fixed amendment rights and to still allow the state to seek a material witness warrant against an alleged victim in a case if there is a recalcitrant victim who does not want to participate or cooperate in the process and if the district attorney believes it is in the interest of justice to seek a material witness warrant against that victim.

That is why we have amended language that we would invite this Committee to consider within Section 23, subsection 1, paragraph (e). It states, "Nothing in this section shall abrogate a defendant's Sixth Amendment rights under the *United States Constitution* nor diminish the state's disclosure obligations to a defendant." This language was taken from North Dakota's Constitution when they passed their version of Marsy's Law. It continues, "Nothing in this section prevents a prosecutor from seeking a material witness warrant if it is within the interests of justice." We would ask this Committee to consider adopting such language.

If I misunderstood the arguments, I apologize. I was personally involved as one of the stakeholders for the Washoe County Public Defender's Office to craft language in the 2015 Legislative Session. My colleague, Assemblyman Steven Yeager, was the lobbyist for the Clark County Public Defender's Office and also a stakeholder. We could not reach consensus language. Some of the language we thought should have been in this resolution talked about how the rights of the defendant shall not be infringed or abrogated by such measures. We simply could not reach a consensus. I wanted to dispel the notion that there was consensus reached by all parties. There was not.

We have already heard about the term "victim" and how it has been codified for years within the NRS. This resolution attempts to expand its definition greatly. This is an overly broad definition that may encompass a number of other persons. The example that comes to mind is a person who commits a driving under the influence (DUI) that causes substantial bodily harm or death. There might be a number of motorists on the roadway who witnessed a horrific crime. There may be 10, 15, or 20 motorists that witnessed it. Studies show that people even witnessing horrific traffic accidents can suffer post-traumatic stress disorder (PTSD). Even though they are witnesses, they are not necessarily victims in the case. They would now have standing, because they have been directly and proximately harmed within the passage of the resolution.

To be clear, this resolution is a misguided attempt to elevate the rights of victims at the expense of rights of the accused, which has had disastrous consequences in other states that have enacted similar legislation. These states are now facing constitutional challenges within their state and federal court systems. They are struggling with the economic impact mandated by their own criminal justice systems as a result of passing similar legislation. We believe Senate Joint Resolution 17 of the 78th Session will have the same detrimental effect in Nevada.

There is another issue that popped into my mind as this session has progressed. There was a Senate Joint Resolution 1 that, if passed, would create a clemency board. I noticed when looking at the language from similar resolutions that have passed in other states—California, North and South Dakota, and Illinois—that they talk about clemency boards. If S.J.R. 1 were to pass, would we have to keep coming back and continue to amend the *Nevada Constitution*? Nowhere in this resolution is there language that talks about a clemency board. If other measures pass in Nevada, do we have to come back and take that

into consideration? I think we would, and then keep amending the *Nevada Constitution*. Do not pass Senate Joint Resolution 17 of the 78th Session. We can codify everything that needs to be codified within the "Protection of Victims and Witnesses" statute set forth in NRS 178.569 through 178.5698.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:

We are also in opposition to Senate Joint Resolution 17 of the 78th Session for the reason stated by my colleagues. Our primary concern is that the rights of the victim will be outweighed by the rights of the accused as applied. The rights of the accused have been of paramount importance in the United States and the founding of our country. They are protected by the Fourth, Fifth, Sixth, and Eighth Amendments. The heart of these constitutional inquiries is whether and to what extent of governmental intrusion is required when a person faces potential deprivation of life, liberty, and property. We do not contest that victims are, by no choice of their own, thrust into a complex judicial system. The impact is life altering. However, many of the rights in this bill already exist in statute. Elevating them to a constitutional level will conflict with the rights of the accused. While my predecessor, the colleagues to my right, and many of the stakeholders involved in this legislation worked diligently to diminish those conflicts, we anticipate that these issues will be resolved through the courts. We are already starting to see that impact in states such as California. We are in discussions in North Dakota on some of the rights conflicts issues that are occurring there.

One case that comes to mind is *Gilman v. Brown* [814 F.3d 1007 (2016)]. It was just decided in the United States Court of Appeals for the Ninth Circuit in 2016. It came out of the eastern district of California. The lower court found that there was litigation that arose under the ex post facto clause, because defendants were subjected to Marsy's Law in parole and probation proceedings. Legislation was enacted to effectuate Marsy's Law, and it led to a reduction in parole hearings, which eventually increased the length of incarceration for certain offenders. The Ninth Circuit reversed that decision, and in our opinion, this is a Ninth Circuit decision and mandate on the slowing down of the justice system. These are the consequences of Marsy's Law.

We also share the procedural concerns of the Clark County and Washoe County Public Defender's Offices. The language "timely resolution" is vague. What may be timely to the victim may not be timely in a death penalty case, for example. The resolution for this particular conflict will be placed in the position to carry out executions at a speedier rate. How do we determine that? As to the language, "To prevent the disclosure of confidential information or records to the defendant . . . which could be used to locate or harass the victim or the victim's family," this language could be interpreted to prevent the defense counsel from even receiving a name of the victim, and therefore denying the accused the right to due process.

Finally, the right to be heard at most criminal proceedings could delay critical proceedings such as bail and parole hearings, which infringes on the accused's due process rights. We encourage the Committee to think through this and to have a model of smart justice in making these decisions. We encourage you to vote no on this resolution.

Chairwoman Diaz:

Are there any questions from the Committee? We will now take testimony in the neutral position. Seeing none, I will invite Senator Roberson back up for closing remarks.

Senator Roberson:

I want to thank you all again for hearing Senate Joint Resolution 17 of the 78th Session. I hope you will all support this resolution. I want to remind everyone that any amendments to this resolution will kill the resolution, because it needs to pass this session unamended from last session. The opponents of this resolution who testified today did not come speak with me about an amendment. I do not support the amendment. I listened to their testimony and found it a boldly disingenuous smokescreen. I do not take their arguments seriously, and neither should you. I encourage you to vote for Senate Joint Resolution 17 of the 78th Session.

[Chairwoman Diaz designated (Exhibit H), (Exhibit I), (Exhibit J), (Exhibit K), (Exhibit L), and (Exhibit M) as presented but not discussed. They will be made part of the record.]

Chairwoman Diaz:

I will now close the hearing on Senate Joint Resolution 17 of the 78th Session. I will open it up for public comment. Seeing none, this meeting is adjourned [at 3:54 p.m.].

RESPECTFULLY SUBMITTED:

Julianne King
Committee Secretary

APPROVED BY:

Assemblywoman Olivia Diaz, Chairwoman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C are written testimonies, presented by Kelvie Malia Stamm, Private Citizen, Las Vegas, Nevada, in support of Senate Joint Resolution 17 of the 78th Session.

Exhibit D is a letter dated May 9, 2017, to the members of the Assembly Committee on Legislative Operations and Elections, authored and presented by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit E is an excerpt from an article from *The Dickinson Press* titled "Marsy's Law cost estimated at \$2M per year" by Mike Nowatzki, dated September 29, 2016, available at www.thedickinsonpress.com/news/northdakota/4126084-marsys-law-cost-estimated-2m-year. This copy was submitted by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit F is written testimony presented by Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit G is a proposed amendment to Senate Joint Resolution 17 of the 78th Session submitted by Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office and John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office.

Exhibit H is a copy of an article from CNET titled "Henry T. Nicholas III: A human tragedy" by Steve Tobak, dated August 23, 2008. This article is available at www.cnet.com/news/henry-t-nicholasiiiahumantragedy. This copy was submitted by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit I is a copy of an article from the *Los Angeles Times* titled "The two Henry T. Nicholases" by Robert Greene, dated June 11, 2008, available at <http://www.latimes.com/opinion/la-oe-greene11-2008jun11-story.html>. This copy was submitted by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit J is a copy of an article from *Vanity Fair* titled "Dr. Nicholas and Mr. Hyde" by Bethany McLean, dated September 30, 2008, available at <http://www.vanityfair.com/news/2008/11/nicholas200811>. This copy was submitted by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit K is a copy of an article from *Argus Leader* titled "Marsy's law questions ripple through South Dakota" by John Hult, dated December 4, 2016, available at www.argusleader.com/story/news/2016/12/04/marsys-law-questions-ripple-through-south-dakota/94731092/. This copy was submitted by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit L is a letter dated May 8, 2017, in opposition to Senate Joint Resolution 17 of the 78th Session to members of the Assembly Committee on Legislative Operations and Elections, submitted by Jim Hoffman, Legislative Committee, Nevada Attorneys for Criminal Justice.

Exhibit M is a letter dated May 8, 2017, in support of Senate Joint Resolution 17 of the 78th Session to Chairwoman Diaz and members of the Assembly Committee on Legislative Operations and Elections, submitted by Kristy Oriol, Nevada Coalition to End Domestic Violence and Sexual Violence.



Senate Joint Resolution 17 Supporters

Advocacy Groups

10,000 Kids
AARP
Baby's Bounty
The Center of Las Vegas
Childrens Advocacy Alliance
Committee to Aid Abused Women
Cupcake Girls
Family Promise
Hookers for Jesus
Junior League of Las Vegas
Log Cabin Republicans
Nevada Coalition to End Domestic and Sexual Violence
Nevada Women's Lobby
New Hope International
Police Wives of America
Safe Embrace
Safe House
Safe Nest
Tu Casa Latina
Volunteer Homeland Reserve Unit

Winnemucca Domestic Violence Shelter

Labor Organizations

Las Vegas Police Protective Association
Las Vegas Police Protective Association Civilian Employees
Reno Police Protective Association
Nevada Association of Public Safety Officers

Law Enforcement Organizations

Las Vegas Asian Pacific Police Officers Association
Las Vegas Asian Police Officers Association
Las Vegas Black Police Officers Association
Nevada Sheriffs and Chiefs Association
Peace Officers Research Association

Business Organizations

Hakkasan Group
Las Vegas Asian Chamber of Commerce
Las Vegas Latin Chamber of Commerce
Nevada Federation of Independent Businesses
Nevada Trucking Association

Carrie Ann Larson – Stalking Survivor

Letter to Lawmakers in Support of SJR 17

I am a victim of crime. I have struggled through 5 long years of requesting restraining orders, attempting to get them served, prosecutions and their aftermath. Over and over and over. My perspective of the criminal justice system is unique amongst the everyday Nevadans but unfortunately it is not unique amongst crime victims. That's why I am here today; to share my experience and ask for your support of SJR17 - Marsy's Law.

Last year, I attended the Laughlin AG for a Day event with Adam Laxalt and his team. After the event, I approached the Attorney General wanting to speak to him about changing the way victims interact with the courts in Nevada. Just a few moments into the conversation, Mr. Laxalt said, "It sounds like the reforms you're suggesting are being worked on right now with Marsy's Law." He hit the high points and I went home to do my research. It only took a moment to recognize that someone else had been thinking the same things I had.

Senate Joint Resolution 17 (SJR17 for short) - "Marsy's Law for All" is a constitutional amendment that will give equal rights to victims of crime in our state. Currently, Nevada statutes give crime victims some rights but there are big pieces of the puzzle missing. Many people forget that in criminal court, it's the criminal versus the State of Nevada. The victim is only a witness to the crime, not a party to the case. Offenders, on the other hand, have established constitutional rights - ones that I'm sure we are all familiar with from watching tv crime shows. Victims have no such protections in our constitution.

The way our laws are currently written, victims have little to no contact with prosecutors before trial and without written request, zero notification for any court events that occur after. What that means is that unless an "arrestable offense" occurs during the time the offender is required to stay out of trouble, the judge and prosecution have no indication that a violation of the judges orders may have occurred.

My family, friends and I have endured five years of harassment, following, threats and intimidation by a criminal couple. Through the course of multiple restraining orders, offenses and violations, deals with the prosecution are commonplace. The cycle is consistent: Protective Order, Violation, Prosecution, Conviction, Stay out of Trouble Order, Status Checks, Case Closed. As frightening and torturous as it is to never know when the next event will occur, it is just as anguishing to constantly be wondering if the prosecution will take the time to listen to you and consider the your point of view and knowledge of the situation.

During an early incident in my case, a violation occurred in Bullhead City, which was tried and convicted during a Laughlin court Stay Out of Trouble Order. The status check occurred in Laughlin without our knowledge because we didn't know they even existed, didn't know we had to fill out a form to be informed of them and the offender's case was subsequently dismissed on good behavior. The court believed the offenders had complied with the terms of the prosecution deal, which in turn, emboldened their criminal behavior. Marsy's Law will level the playing field for me and thousands of victims like me, both in and out of the courtroom. It will guarantee that I receive notification of proceedings and major developments. I will have the right to restitution. It gives me a right to receive notice if they are booked into or let out of jail. I will have the right to be present at court proceedings and give input to the prosecutor before a plea agreement is finalized. Most importantly, we will finally have the right to be heard at plea or sentencing proceedings or any process that may result in the offender's release.

This past month, January, was Stalking awareness month. Stalking victims will particularly benefit from Marsy's Law. Remember me mentioning the term "arrestable offense". Let me tell you, arrestable offenses are rare. Most stalking activities taken in the singular aren't even illegal. It's not illegal to leave notes and packages at someone's house, that is unless they directly threaten you. But most stalkers are smarter than that. They play with the line of legality so as to stay out of jail and keep harassing their victim. Stalking victims play a game of cat and mouse for months or years; logging phone calls, notes left on cars or in driveways, items missing from their yards or even drive by's that always seem to be just beyond the scope of the restraining order. Now we will have a voice. We

will have a right to tell the prosecutors the story beyond that which is written in the police report, once our offenders FINALLY make a mistake.

I'd like to give you some stalking facts that I personally relate to:

I am one of 7.5 MILLION people are stalked in the US per year

46% of victims experience at least one unwanted contact per week

11% of stalking victims have been stalked for 5 years or more

Only 1 in 5 stalkers use weapons to threaten or harm their victim, in other words - 80% of of stalking victims are not threatened with weapons. Most stalkers are non-violent and stalking only results in violence 30-40% of the time. The harm most victims of stalking experience is mental and emotional abuse. It's being kept in a near constant state of fear of what MIGHT happen.

Almost 1/3 of stalkers have stalked before

46% of talking victims fear not knowing what will happen next and

29% of stalking victims fear the stalking will never stop.

Marsy's Law is being passed all over the country and began its Nevada journey during the 2015 legislative session. It passed the legislature in 2015 and must pass in this 2017 session. Then it can go on to be approved by the voters in 2018. So, we are 1/3 of the way home. Please join me in supporting Marsy's Law by signing the Marsy's Law Proclamation, contacting your state legislators and visiting www.marsyslaw.us.

Thank you for listening.

Carrie Larson

I just want you to know that I am not including my personal contact info for fear of further victimization.

SJR 17 / Marsy's Law for NV – Cherry Vercher

Letter to the Lawmakers

To whom it may concern,

It's time to guarantee that victims of crime get the consideration they deserve in Nevada. I'm a survivor of domestic violence and I want to make sure you know about Senate Joint Resolution 17, also called Marsy's Law for Nevada. Our state does not provide constitutional protections for victims of crime. We have no guarantees that we will be informed if a suspect is released. We don't have a guarantee that a victim will receive restitution. Victims must rely on the prosecutors and judge, and sometimes on the information available by other means.

Being a crime victim or loving relative is hard enough, it can be frustrating, scary, and confusing. As a survivor, I believe we should receive the voice and consideration we deserve. Suspects have plenty of important, guaranteed rights. I believe victims deserve a few too. That's why I will support SJR 17 / Marsy's Law for Nevada, and I hope our Nevada Legislators will too.

Cherry Vercher

Las Vegas

I just want you to know that I am not including my personal contact info for fear of further victimization.

Debra Payne Dedmon – Friend of Drugged Driver Victim

Letter to Lawmakers in Support of SJR 17

I am writing to ask for your help. You are the last hope for Justice in a very long journey through the system. Cameron James Holiday is currently serving time for violating drug court. He was arrested for possession in Alamo, Nevada more than 3 years ago. He was sentenced but could not begin serving his time as he was on prescription meds from a doctor. He was given 4 months to comply. During this time while driving to Vegas Cameron drove headfirst into a semi-truck killing Christy Kelly, my friend of 36 years. After a toxicology came back he was arrested on DUI. However, he was let go after a couple of weeks despite violating drug court by getting a DUI. What felt like years later finally came the court date for the crash. Not one time did the DA speak to the victim's family but instead fraternized with the defense attorney. During the trial, we had to look at the ground and not show emotions. We were made to feel like criminals, especially when he took the stand and painted himself as the victim. Section 23.1 A of SJR17 or Marsy's Law would have allowed us to be treated with fairness and respect for our privacy and dignity, and to be free from intimidation, harassment and abuse throughout the criminal or juvenile justice process. The justice process should help bring closure to us as friends and family of a victim, not make things worse.

I just want you to know that I am not including my personal contact info for fear of further victimization.

GENELL “Bevie” BEVERIDGE / NEVADA – Domestic Violence Survivor

My name is Genell Beveridge and I am a survivor. For the past 20 years, I have tried unsuccessfully to get my ex-husband out of my life. It wasn't always like this.

We had two kids together and for a long period everything was good, until he showed his true colors. I tried to let him visit our children so that they could know their father, but this led to him forcing himself back into my life and eventually to more domestic violence; violence that our children have witnessed first-hand.

This violence has led to long-term physical and mental pain that affects me every day. My ex-husband is away right now for domestic violence charges, but that hasn't stopped him from harassing me. Before a parole hearing last month, he attempted to reach out to our children to let them know about the hearing. I was not informed of this, instead I found out from our kids. Luckily, he was denied parole, but this is only prolonging the inevitable. It was soon after that hearing that he called me from behind prison walls to let me know he was denied parole and that I 'wouldn't have to worry about him coming after me for another year or so.'

This is just one example of why I support SJR 17 and believe I would benefit from it, and section 23.1 C. The law would allow my safety, and the safety of any crime victim, to be considered as a factor in fixing the amount

of bail and release conditions for the defendant. I believe as a victim I deserve that consideration, and I believe every victim does too.

I just want you to know that I am not including my personal contact info for fear of further victimization.



**JUNIOR LEAGUE OF
LAS VEGAS**

861 E. BRIDGER
LAS VEGAS, NV 89101

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RE: MARSY'S LAW / SJR 17

February 22, 2017

Dear 2017 Nevada Legislature,

On behalf of the 350 active members of the Junior League of Las Vegas, I am writing to offer Junior League's support of Senate Joint Resolution 17, which passed in 2015 and is more commonly known as Marsy's Law.

The Junior League of Las Vegas is an organization of women committed to promoting voluntarism, developing the potential of women, and improving the community through the effective action of trained volunteers. Our members work tirelessly to support our community in Southern Nevada through supporting and advocating for individuals who may not have the resources to do so. For example, Junior League was instrumental in advocating for Nevada's Safe Haven Law, which offers parents an anonymous and safe way to surrender their baby. Our organization has also helped root many non-profits in Southern Nevada, including HELP of Southern Nevada and the Shade Tree Shelter. Many users of these services would be served through the passage of Marsy's Law.

It's important to Junior League that victims of crimes are entitled to rights and considerations through the judicial process. It's time that victims are no longer considered an after-thought. Marsy's Law helps to ensure that victims have the same level of rights as those accused or convicted of a crime by affording them meaningful rights, including the right to privacy, the right to notice of related criminal proceedings, related records and restitution.

Sincerely,

Jennifer White
2016-17 President

Katie Haynes – Domestic Violence Survivor

Letter to Lawmakers in Support of SJR 17

Hi, my name is Katie Haynes and I am a survivor of domestic violence and abuse.

The question I've asked myself most is, why did I stay? Aside from living in fear, I made an all too common mistake by believing I could help him and make him better. I learned to deal with the emotional abuse and then the physical abuse. He continued to isolate me and he made me feel like no one would ever care about me. The smile I was once famous for was gone. I had pushed everyone who loved me away. I didn't understand how someone who said they loved me could be so cruel.

I've always been strong and independent but this man changed the person I once was. Things got worse quickly and it started affecting my daughter as well. In April 2016 we got in our last argument and he beat me in front of Hannah – and finished by throwing me down a flight of stairs. My daughter saved my life by calling 911 that night. I was in the hospital with a concussion, black eyes and bruises all over my body. That night we were placed in the shelter. After two months we found a small place and we felt safe again – that's until he found me and tried to strangle me, throwing Hannah to the ground after she tried to protect me. I was thankful for the bystanders who witnessed the incident and helped us.

Court was difficult, but finally he is where he deserves to be. My daughter and I are now staying in CAAW transitional housing where I have met some of the most amazing women. I'm truly thankful for the support groups and everyone who has helped me through this difficult time in my life. That smile that was once lost is back to share with everyone who truly cares about me.

I am beginning to see the light at the end of the tunnel but besides the support from advocates, friends and family I could have used additional support through this process. My daughter and I would have greatly benefitted from SJR17, specifically sections 23.1 B, C and G which require that victims receive notification when the accused is released on bail, as well as ensures victims will be protected from harassment and abuse by the accused and their representatives.

I just want you to know that I am not including my personal contact info for fear of further victimization.

KELVIE MALIA – Domestic Violence Victim / SJR 17 Nevada Letter - 2017

My name is Kelvie Malia and I am lucky to be alive.

When I met my now estranged husband in Bible study I knew he had a checkered past but thought he was on his way to bettering his life. While working as a traveling notary he began stalking me. He assumed my iCloud account to monitor my calls, texts, pictures as well as using the Find My iPhone app to track exactly where I was.

Last September was when the attack happened - 2016. I returned home from work to what was becoming regular verbal harassment and abuse. I laid down to take a nap only to be woken up by him punching me in the back. From here he forced me into our truck. He was drunk, swerving all over the road while hitting me, momentarily leaving the vehicle at times to try and fight strangers in the middle of the road.

He pulled into a drive-through to get some food, and this was where I attempted to escape. I ran to a nearby church to try and find anyone to help me call the police. He chased me in the truck, and at one point smashed into a concrete wall and tried to trap me in an alley behind the church to keep me from getting away. He then got out on foot and grabbed me. It was at this point, before attempting to throw me back in the truck, that he stood over me he pummeled me repeatedly, in the face, with a closed fist.

I was bleeding from my face and throwing up blood. I was bed-ridden in a safe house for days.

After being arrested two and a half months later, he was released on bail within 19 hours. At the next hearing, I was intimidated by the army of friends and family that showed up as well as by his lawyer. At one

point the defense tried to cite my lack of immediate action as grounds to drop the case. I didn't take immediate action because I was bed-ridden at the safe house.

At his arraignment on a warrant for assault with a deadly weapon he was given prohibition, was released, and back out on the streets. The next court date was scheduled for February 7th but the defense was granted a continuance due to a "Conflict of interest." He had known about this date for two months.

Although there are many different sections of SJR17 that I would benefit from, as I look forward to the future I worry most about my own personal safety not only from my estranged husband but from his friends and family as well. Section 23.1 B would allow me to be reasonably protected from the defendant and persons acting on behalf of the defendant.

I just want you to know that I am not including my personal contact info for fear of further victimization.

Peggy Lee Thrower – Domestic Violence Survivor

Letter to Lawmakers in Support of SJR 17

My name is Peggy Lee Thrower. I never thought that an acquaintance of a friend would put me through a real-life nightmare. Before the attack happened, I met my attacker a couple of times four years prior. He was an acquaintance of a neighborhood friend so when he showed up on my doorstep asking to help me, an elderly woman who had recently suffered a stroke, with some things around the house, I took it as a kind gesture. It turns out that since I had met him four years earlier he had been away to prison and escaped, showing up in my neighborhood. He helped with some chores around the house, handy work here and there and was beginning to roof my house when I corrected him about how to properly roof my house. That correction combined with not letting him borrow my truck turned him from a regular person to an aggressive and violent monster. I keep to myself and do not watch the news otherwise I may have heard or seen that this man was on the run. Then he attacked me. I do not remember the attack, but I remember waking up on the floor of my house in a pool of blood. I had an imprint of the ring he was wearing in my jaw, had one eye completely swollen shut and felt like he also tried to break my arm. While I was on the ground he was threatening to hit me with a fire poker. Eventually he found my keys, took my truck and attempted robbery where he was finally recaptured. From here the nightmare got worse as we began the court proceedings. While in court I was never asked about my medical records from the attack. In order to make the defendant appear victimized the defense accused me of aiding him in robbery. I am reliving the horror of my story in hopes that future victims will not have to go through what I have gone through. SJR17 or Marsy's Law would help future victims in similar situations. Although it may

not have stopped him from showing up on my porch, I would have been respected and free from intimidation and harassment within the courtroom. Please help support Marsy's Law. I just want you to know that I am not including my personal contact info for fear of further victimization.

RAYLENE JOHNSTON – Sex Assault Survivor

Letter to Lawmakers in Support of SJR 17

My name is Raylene Johnston and my daughters and I are survivors. It all began when my eldest daughter, an honor roll student with a bright future, ran away.

She turned up weeks later only to request to move in with her uncle and not back in with me, my husband and our youngest daughter. It was at this point my brother broke the news to me. My then-husband and father to my youngest daughter, allegedly sexually assaulted my oldest daughter.

He was arrested, but days later was released on bail. My daughters and I were never notified that he was set free. In fact, we heard about his release on bail through a friend. While out on bail he was constantly calling and harassing my daughters. At one point his mother, who provided him with the bail money, called and threatened to murder me.

As you might imagine, while this occurred years ago, we continue to suffer from stress related to these events.

He went to trial, but due to a loss of the evidence he was found not guilty on a technicality and was released back out on the streets – where he remains today.

While I cannot do anything about the jury's decision to release this person I can appear before you to speak on behalf of my family in support of SJR 17, also known as Marsy's Law.

My daughters and I would have greatly benefitted from SJR17, specifically sections 23.1 B, C and G which require that victims receive notification when the accused is released on bail, as well as ensures victims will be protected from harassment and abuse by the accused and their representatives.

I just want you to know that I am not including my personal contact info for fear of further victimization.

Ron Newsome– Home Invasion Survivor

Letter to Lawmakers in Support of SJR 17

On July 11, 2015 at 10:30am a man entered my home where myself and my oldest special needs son live. He came into our home for which I was present at the time. He then proceeded to rob our home in what is called a “home invasion.” At the end of his terror of robbing us he then proceeded to steal our car. Which later resulted in an accident before it was recovered, days later, all of which was recorded beginning to end on 16 security cameras.

The results aside from the mental terror he rained on us, it was a cash cost of aprox. \$10,000.00. At this time he was on drugs and was very violent in his behaviors.

4 days following my home invasion. Mr. Brown proceeded to commit another home invasion on a family of 5 while they were asleep, again stealing their car at the end and crashing it and then proceeding to set the car on fire.

He was finally arrested and after a police chase involving helicopters, 5 squad cars and numerous police. He was charged with 5 felony counts at the time of his arrest. At one point before his arrest he was posing as a policeman trying to get people to turn their cars over to him.

At the hearings at which took place over the next 8 months, I was never notified or even questioned other then my initial complaint. At the 7th month mark I discovered a plea agreement had been made. The charges were dropped to one “Gross Misdemeanor.”

SJR17, also known as Marsy’s Law would have made a difference, for both myself and family as well as justice:

- We at no time were asked or questions by the DA’s office about anything in the case. (23.1 F, H)
- We would have never agreed to the plea bargain and would have argued that with this case and his criminal history we deserved better justice. (23.1 F, H)
- At no time were we informed of any hearings, court times, or even approached at the hearings by the DA’s office. (23.1 F, H)
- After he was sentenced, we were not informed of his release and or when the exact date would be. We found out that he was out of jail, by people in the area and my activeness in the case. (23.1 G)
- The only thing we were ever informed about was being able to speak at sentencing. (23.1 H)

If Marsy’s Law was enforced at the time of this case, I as a victim would have felt better that justice was in our favor to help coped and deal with the stress of having our home robbed and our car stolen. As a victim we felt powerless and victimized by the system again.

I just want you to know that I am not including my personal contact info for fear of further victimization.

Sarah Dixon – Family Member of Drunk Driver Victim

Letter to Lawmakers in Support of SJR 17

My name is Sarah Dixon. My sister Christy Kelly was killed by a drugged driver on February 17th 2015. Her killer was found not guilty on December 8th by a jury that consisted of the defendant's ex-girlfriend and other jurors who knew the defendant and his family. The trial was held in Lincoln County and it took almost a year and a half to get this to trial. The defendant, who had already been to drug court after nearly overdosing, was not properly tested for drugs and it could not be used in court. My family was given no opportunity to speak. My family had to keep our heads down and look at the ground and not make any noises during the entire trial. The jury was not allowed to know that he was already in prison for violating his drug court before and after killing Christy Kelly. The DA never spoke to our family, he only spoke with the defendant's attorney and the defendant. My sister's body was never properly drug tested to prove that she did not have drugs in her system. Because of this when the defendant took the stand he pinned everything on my sister who obviously could not speak for herself. SJR17 or Marsy's Law would have helped us in many ways. Most notably section 23.1 F, would have allowed us to be involved with the DA throughout the case, instead of being on the outside. My family has suffered so much pain and we would like our story heard.

I just want you to know that I am not including my personal contact info for fear of further victimization.

Stephanie Virden – Stalking Victim

Letter to Lawmakers in Support of SJR 17

My name is Stephanie and I was the victim of a crazy and confusing situation a little over a year ago. The timeline was short, it started October 2015 and came to a head January 2016. I was initially approached via Facebook by a girl my age named Casey. Her profile said she went to my high school, which is a small high school in San Diego. It's not the type of place everyone knows about so I felt trusting of this girl immediately (not to mention she looked familiar) and I figured she must be someone I had known but just forgot. Over the following week she talked to me everyday about relatable things and built my trust pretty quickly. Out of the blue one day she told me she had a friend who is the most amazing guy she knows. He needed to meet a great girl and she felt we would hit it off. The only catch, he lived in Scottsdale so it would have to be long distance. I was up for the adventure. Casey introduced me to her friend named Christopher and we hit it off. Little did I know, it was actually Christopher introducing himself to me. He was impersonating 'Casey' online to gain other girls trust and then introduce himself as this amazing trustworthy man.

Over the following few weeks he and I talked every single day, all day long. He was so sweet and funny and charismatic but also kind of dorky so he seemed real and normal. I asked a lot of questions about his life and he had perfect answers. He told me he had previously had cancer and there were some residual health issues from it, he owned a marketing company, was married but now divorced, etc.

He planned a trip to Napa for us, paid for everything. We met there and had a great time, with only a few awkward moments that should have been red flags.

One day in January I get a call from my best friend. She told me that another girl she knew from our area had mentioned a man she was talking to in Scottsdale named Christopher and it all seemed too similar. She linked us up to talk. After a very confusing conversation, we determined that he was lying about everything. He even lied about his name.

Christopher is currently married, never had cancer, is also currently on probation for aggravated harassment, impersonation of another, fraud, forgery, amongst many other things. I was terrified. I changed all of my contact information, deleted my Facebook and went off the grid. Never in my life had I felt so violated.

I immediately tried to go to Reno PD to get a restraining order because I was unsure of how crazy he really is. I was told there is nothing I can do because he is in another state. But if he comes to Nevada to harm me, I should call them. Protection was not an option.

One day I received mail at my office which was from Maricopa Superior Court. It was court documents of a hearing that had happened a few days prior. The documents amended him from all charges saying it was a mistake. It was on the courts letterhead and stamped/sealed with a judges signature. I was confused. After speaking with his PO, it was determined that he forged court documents along with the judges signature and sent those to me. That is considered interstate mail fraud and a federal investigation was supposed to take place but I received no further information.

I was contacted about 6 months ago by his PO to let me know Christopher had been sentenced to 1 year in prison and 3 years of intensive probation right after.

My concerns are this:

When he gets out of prison, how will I know? Now that this case was moved- am I supposed to constantly check on his custody status?

What if he or his wife come after me? Is there really no way of getting the protection order until it is potentially too late?

What kind of additional harassment is in my future from Christopher? What are my rights as a victim?

When I initially spoke with his probation officer about this whole situation, he told me that Christopher is "the worst master manipulator he had ever come in contact with". It is my hope that with this story I can somehow help pass a law to better advocate for victims of these crimes or ones similar. SJR17 or Marsy's Law is that law. Marsy's Law will help protect future victims from harassment by the accused or convicted or those acting on their behalf. Marsy's Law will also help notify me of hearings and proceedings, and when the day comes that he is back out on the street Marsy's Law will help me be protected.

Thank you.

Stephanie Virden

I just want you to know that I am not including my personal contact info for fear of further victimization.



Office of the Public Defender

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Philip J. Kohn, Public Defender • Daren B. Richards, Assistant Public Defender



May 9, 2017

Remarks by John J. Piro, Esq.
Deputy Public Defender
Clark County Public Defenders Office

Dear Members of the Committee:

It is without question that Marsy and her family experienced an incredible tragedy. However, the dramatic change to criminal justice policy sought by SJR 17 in response to this family's tragedy is problematic for at least three reasons. First, it presents one tragic case as justification for a Constitutional change—not just a law that can be tweaked if unintended consequences result, but our Constitution, which cannot easily be tweaked when the billionaire behind this bill leaves us here in Nevada to deal with the consequences of this law. Marsy's Law paints the constitutional protections put in place by our country's founders, such as the presumption of innocence, as unjustified technicalities afforded to “dangerous” “rapists, murderers, [and] child molesters.”¹ Moreover, Marsy's Law conflates “victims' rights” and “criminal justice.”² Although a victim's participation in the criminal justice system is valuable for dignity, catharsis, and fairness purposes, it should not be confused with the constitutional due process protections afforded criminal defendants and convicts.

Second, Marsy's Law capitalizes on concern and empathy for victims of crime while ignoring the immense fiscal, legal, and policy concerns that will result from passage of this bill.

¹ <https://marsyslaw.us>

Finally, Marsy's story and the story of her murderer appear to present a flaw in the bail process. Despite this, SJR 17 uses the word “bail” only once, stating that the “safety of the victim and the victim's family [is to be] considered in fixing the amount of bail and release conditions for the defendant”³ However, this addition is of questionable value since Nevada law already on the books provides that public safety is a primary factor considered when setting bail. In sum, Marsy’s law seeks to put the concerns of an individual accuser above the concerns of our justice system, the rights of the accused, and the community as a whole—as most of these provisions in SJR 17 will take affect before an accused is even convicted of a crime.

Alexander Hamilton once posited that a key function of a representative legislature is to prevent unqualified complacency to every sudden breeze of passion of the majority, which means that the legislature must occasionally ignore the will of a strong lobby to protect important legal and constitutional interests.⁴ Now is that time for our state’s legislature.

I. MARSY’S LAW: A SOLUTION IN SEARCH OF A PROBLEM

Marsy’s law is a solution in search of a problem. Nevada already has several provisions in place by this legislature to protect a crime victim’s safety, and nobody is trying to lessen those protections. So, now is it the position of this legislature that a California billionaire’s⁵ wealth and

² See Ryan S. Appleby, Proposition 9, Marsy's Law: An Ill-Suited Ballot Initiative and the (Predictably) Unsatisfactory Results, 86 S. Cal. L. Rev. 321, 328 (2013).

³ Section 23(1)(c).

⁴ Id.

⁵ The main proponent of Marsy's Law is Henry Nicholas, Marsy's brother. He is the cofounder of Broadcom and currently valued at \$1.3 billion by Forbes magazine. He personally contributed \$4,851,406, accounting for 94 percent of the total amount spent to support the passage of Marsy's Law in California. In California, Proponents of Marsy's Law spent a total of \$5,149,931 on the campaign, as compared to the \$2,356,567 spent by various groups simultaneously opposing Marsy's Law and California’s Proposition 6. The Marsy's Law campaign in California also spent two-and-a-half times the amount on “campaign consultants” as its opponents and \$75,000 on campaign literature and mailings, after extensive petition circulating. These expenditures allowed proponents to frame the issue as one of “victim's rights” rather than costly criminal law reform.

influence can now somehow influence law that is better thought out than the protections already debated upon and put in place by this legislature?

Additionally, Marsy's Law wants to provide alleged victims and accusers standing to compel the police, the prosecutors, and the court's to do certain actions, as seen fit by the alleged victim.⁶ Thus, it creates a constitutionally protected private right of action for the public to sue law enforcement, prosecutors, and defense attorneys trying to do their jobs. Frankly, it is rather shocking that there is no fiscal note attached to this bill.

Marsy's Law ignores the long standing belief that our court system should be dispassionate when handling court cases. In our justice system prosecutors must make decisions legitimately founded on the complex considerations necessary for the effective and efficient administration of law enforcement, without intervention by passionate accusers seeking intervention while motivated by personal concerns.⁷ Marsy's Law purports to change Nevada's criminal justice system by granting alleged victims the ability to force public officers or employees to carry out any aspect of this constitutional amendment, and to interject themselves into any court proceeding upon request—so even if I am arguing a 4th amendment issue, or a discovery motion, under this law, an accuser will be allowed to interject themselves into those proceedings to be “heard.”⁸ Thus, Marsy's Law expands the involvement of alleged victims by inserting a passionate and motivated 3rd party into every phase of criminal prosecution.

SJR 17 will most certainly limit the prosecution's ability to weigh whether to pursue conviction, offer a plea bargain, or drop the charges in light of scarce resources and the strength of the case. Most importantly, “Marsy's Law allows ‘victims’ to be involved prior to conviction,

⁶ Section 23(4).

⁷ Dix v. Superior Court, 53 Cal. 3d 442, 451, 807 P.2d 1063, 1066 (1991) (en banc).

⁸ Section 23(1)(h); Section 23(2)-(4).

that is, before it is actually determined whether the person is actually a victim at all.”⁹

Consequently, Marsy’s Law will almost certainly result in more trials being held because SJR 17 presents the possibility that prosecutors will lose their ability to exact evenhanded justice in exchange for pursuing convictions on behalf of especially persistent or vindictive accusers. In sum, “Marsy’s Law seeks to personalize a justice system intentionally depersonalized.”¹⁰

II.

Problems With The Individual Sections Of SJR 17

- (a) We already treat victims with dignity and respect in Nevada’s criminal justice system. Additionally, this section is vague and could impact vigorous cross-examination and the constitution’s confrontation clause.
- (b) This section could impede the right to have a defense attorney send an investigator to ask if a victim will speak to him or her, or the right to subpoena a witness to a hearing. Thus, this section infringes on a defendant’s Fifth and Sixth Amendment rights and Nevada cannot amend its constitution in a manner that conflicts with the U.S. Constitution.
- (c) We already have the safety of a victim, a victim’s family, and the community as a whole as a factor in fixing the amount of bail or release conditions.
- (d) This section is hugely problematic if it is intended to limit the discovery process for an accused in a criminal proceeding. There’s already a statute which allows the DA to withhold witness contact information on the Notice of Witnesses if the State can show the alleged victim could be harmed. Would this constitutional amendment abrogate statutes which entitle us to this information? Moreover, courts can and do restrict information provided in discovery upon request.
- (e) Nevada law already allows an alleged victim to refuse to be interviewed. So, this is a solution in search of a problem.
- (f) Alleged victims already confer with the prosecuting agency, so again this is another solution in search of a problem.
- (g) Alleged victims should absolutely have reasonable notice to all proceedings; however, SJR 17 neglects to account for the increased costs of sending out notifications for every hearing, to include motion hearings.

⁹ Ryan S. Appleby, Proposition 9, Marsy’s Law: An Ill-Suited Ballot Initiative and the (Predictably) Unsatisfactory Results, 86 S. Cal. L. Rev. 321, 357–58 (2013).

¹⁰ Id.

- (h) Alleged victims already have the right to be heard at sentencing, and parole hearings. This section would be expanding those rights to all other hearings. Again, another solution in search of a problem.
- (i) This “timely disposition” section will conflict with the 6th amendment right to effective assistance of counsel.
- (j) Again, alleged victims already have this right under Nevada law.
- (k) Again, we already have this protection for victims, and from what I understand the VINE system works well.
- (l) Victims should be entitled to restitution, but how do we enforce the word timely, and what does it mean?
- (m) Victims should, and already do have their property returned as soon as feasible.
- (n) Victims should be informed of all post-conviction proceedings, but this bill again neglects to address how that is to be done, and it also neglects the added costs of more notifications. Moreover, court cases are public records that are all online.
- (o) The safety of the community is always considered prior to release. This is another solution in search of a problem.
- (p) Victims should be paid first before parole and probation fees. But, that will affect the budget of parole and probation. Moreover, this can be accomplished through legislation. A constitutional change is unnecessary.
- (q) Victims should be notified of their rights, but should we allow our law enforcement agencies to be sued if this does not happen, as is contemplated under section 4?

Finally, it is important to note that the definition of victim in this bill is incredibly vague and over expansive. Thus, it will likely result in a vast swath of passionate people inserting themselves into the criminal justice process—a process that was intentionally designed to be dispassionate.

The purpose of our criminal justice system is to ferret out lies, by testing evidence under the crucible of cross-examination, while keeping the scales of justice balanced. The constitutional rights afforded defendants by our founders are not technicalities. They are well thought out principles debated by our founders when forming our constitution. Although, “smart on crime” is not as good of a slogan as “tough on crime,” it is important to heed Alexander Hamilton’s

words and take a hard stance here by refusing to let a billionaire's lobbying and influence shape criminal justice policy for our state by inserting passionate actors into a system designed to remain dispassionate. Thus, I strongly urge this committee to not pass SJR 17.

John J. Piro
Deputy Public Defender
Clark County Public Defenders Office



101

Marsy's Law cost estimated at \$2M per year

By [Mike Nowatzki](#) on Sep 29, 2016 at 6:03 p.m.



Pam Sharp, director of the state Office of Management and Budget, presents the fiscal note for Measure 3, a crime victim's-rights ballot measure, to members of the Legislative Management Committee at the state Capitol in Bismarck on Thursday. The cost to state agencies impacted by the measure if it passes on Nov. 8, is \$3.9 million in the next biennium. Bismarck Tribune photo by Mike McCleary

BISMARCK — A ballot measure aimed at expanding the rights of North Dakota crime victims and listing them in the state constitution would cost taxpayers nearly \$2 million per year, according to an estimate presented to lawmakers Thursday.

Marsy's Law for North Dakota spokeswoman Lacey Anderson disagreed with the fiscal note, saying it wrongly assumes all crime victims will opt for notification services.

"It assumes there's going to be more people signing up, which we haven't seen in other states," she said.

Retired attorney general and district judge Robert Wefald, who chairs the committee opposing Measure 3 on the Nov. 8 ballot, said it's unnecessary and the fiscal impacts look real.

Assembly Committee: Legislative Operations and Elections
Exhibit: E Page 1 of 3 Date: 05/09/2017
Submitted by: John J. Piro

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"This is going to cost more money at a time when we don't have more money to spend," he said.

If it's approved and takes effect 30 days after the election, Marsy's Law would cost more than \$1.1 million for the remaining seven months of the 2015-17 biennium and nearly \$4 million for the entire 2017-19 biennium, according to estimates provided by county governments, state agencies, the Supreme Court and other groups.

County governments claimed the biggest cost burden, estimated at \$1.74 million every two years, noting prosecutors and their nonprofit agency partners that provide victim support already serve 7,000 victims of crimes against persons. Expanding that role to all 20,000-plus victims of property crimes, misdemeanors, municipal crimes and juvenile crimes would require adding 10 to 15 employees "or cause a significant erosion of services to those victims of serious crimes," the fiscal note stated.

Legislative Management, the panel of 17 lawmakers that carries out certain functions of the Legislature between its biennial regular sessions, also received fiscal notes on measures that would increase tobacco taxes and legalize marijuana use for medical purposes.

State Tax Commissioner Ryan Rauschenberger said his office estimates Measure 4 would generate \$141.7 million in additional revenues during the 2017-19 biennium and reduce consumption of cigarettes by 19.8 percent, liquid nicotine products by 22 percent and other tobacco products by 11 percent.

The measure, being pushed by a coalition of mostly health advocacy groups, would raise the cigarette tax from 44 cents to \$2.20 per pack and increase the tax on other tobacco products from 28 percent to 56 percent of the wholesale purchase price. The state's Community Health Trust Fund and a proposed new trust fund to support health care services for military veterans would each receive an estimated \$36.6 million in fiscal year 2018 after the tax hike.

Retailers, business groups, and major tobacco firms are fighting the measure.

In response to lawmakers' questions, Rauschenberger said the estimated drop in cigarette consumption didn't factor in the possibility of people driving to American Indian reservations to buy smokes at a reduced tax rate. The fiscal note also didn't consider the potential loss of tobacco products when Minnesotans cross the border into Fargo and Grand Forks to buy cheaper tobacco.

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"We did not essentially look at the ripple effect," Rauschenberger said.

The Department of Health estimated that legalizing medical marijuana would leave unfunded cost gaps of about \$154,000 in one-time costs and \$2.5 million per biennium, after revenues such as registration and renewal fees are subtracted from expenses.

Deputy State Health Officer Arvy Smith said implementing Measure 5 within 30 days of passage "will be, like, impossible," noting the department has neither the money nor the 32 full-time staff that would be needed to administer and regulate a medical marijuana program. Measure sponsors criticized a previous Health Department cost estimate as fearmongering.

The state Bureau of Criminal Investigation also estimates needing 15 additional employees to conduct background and compliance checks at a two-year cost of nearly \$2.8 million.

Legislative Management approved posting the fiscal notes on the secretary of state's website.

Mike Nowatzki

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WASHOE COUNTY PUBLIC DEFENDER

ADVOCACY INTEGRITY COMMUNITY

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To: Assembly Committee on Legislative Operations and Elections
From: The Washoe County Public Defender's Office
Date: May 8, 2017
RE: SJR 17-Assembly Committee Hearing for May 9, 2017 at 1:30PM.

Opposition to SJR 17

The Washoe County Public Defender's Office opposes SJR 17. This resolution proposes to elevate the rights of victims by infringing upon the constitutional rights of the accused. Moreover, the rights of victims have already been codified within Nevada law for a number of years and therefore this resolution is wholly unwarranted and detrimental to criminal justice practice and procedure in Nevada.

Specifically, this resolution requires that the safety of the victim and the victim's family be considered as a factor when determining the pretrial or post-conviction release conditions of the defendant. It is important to note that the courts already consider the safety to the victim, the victim's family, or the general public when fixing the amount of bail and release conditions for the defendant pursuant to the statutory factors set forth within the NRS and by relevant Nevada case law as well.

Next, this resolution proposes that a victim should be entitled to be present at all public criminal and delinquency proceedings that the prosecutor and defendant are entitled to be present. If this passes, it will significantly hinder the prosecutor and the defense attorney from timely adjudicating cases and it will have the exact opposite effect of what this resolution intends to accomplish. For example, the Washoe County Public Defender's Office will meet with a defendant shortly following the arrest at the jail, usually within 72 hours, before a lower court magistrate and with the prosecutor present, to address initial appearance, custody status, and bail issues. Thereafter, our office will hold a number of pretrial and status conferences with the prosecutor at court in an effort to timely resolve cases. These are both critical stages within the criminal justice proceedings for the accused that may be delayed or hampered if this resolution passes - particularly if a victim asserts his or her right to be present at each and every proceeding.

In addition, this resolution will allow a victim to assert the timely disposition of a case following the arrest of a defendant. Notwithstanding, under the 6th Amendment to our United States Constitution, the defendant is afforded a fundamental constitutional right to a speedy trial and to have effective assistance of counsel at that trial. This fundamental right will most certainly be infringed upon by the passage of this resolution when the victim asserts that the case is not being disposed of in a timely fashion irrespective of the constitutional rights of the defendant.

Other provisions within this resolution also invade the province of these important constitutional rights afforded to the defendant by allowing the victim to prevent the disclosure of certain information and records, or to allow the victim to refuse to participate in interviews or depositions in preparation for trial. Once again, these provisions should not abrogate a defendant's Sixth Amendment rights to effective assistance of counsel under our United States Constitution nor diminish the State's disclosure obligations to the defense. It is also critical to note that these provisions may prevent a prosecutor from seeking a material witness warrant against an alleged victim in a criminal matter if justice so requires.

Moreover, despite the fact that the term "victim" has been codified for years within the NRS, this resolution also attempts to greatly expand the definition of victim to include any person "directly and proximately harmed by the commission of a criminal offense." This overly broad definition may encompass other persons involved in a criminal matter that were never intended to be included within this definition, such as a witness to a crime, that may now suffer emotional distress for witnessing a criminal offense, but not actually alleged to be a victim by the prosecutor in the case.

To be clear, this resolution is a misguided attempt to elevate the rights of victims at the expense of the rights of the accused which has had disastrous consequences in other states that have enacted similar legislation. These states are now facing constitutional challenges within their own state and federal court systems and they are struggling with the economic impact mandated upon their own criminal justice systems as a result of passing similar legislation. SJR 17 will have the same detrimental effect in Nevada. As a direct result, I would implore this committee to not pass SJR 17.

Sean B. Sullivan
Deputy Public Defender,
Washoe County Public Defender's Office

PROPOSED AMENDMENTS TO: SJR 17

Contact information:

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EXPLANATION: Matters in (1) *blue bold italics* is new language in the original bill; (2) *variations of green bold underlining* is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; and (5) *orange double underlining* is deleted language in the original bill proposed to be retained in this amendment.

Purpose of the Amendment: The purpose of this amendment is to ensure that nothing within this section will infringe upon the defendant's 6th Amendment rights within the United States Constitution, nor will it infringe upon the State's discovery obligation to the defendant. Moreover, this amendment is to ensure that the State may still seek a material witness warrant against a witness in a criminal matter, including an alleged victim, within the interests of justice.

PROPOSE TO AMEND BILL AS FOLLOWS:

S.J.R. 17 of the 78th Session

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights. Legislative Counsel's Digest: Under the Nevada Constitution, the Legislature is required to provide by law for certain rights of the victims of crimes, in particular, the right to be informed of the status of criminal proceedings concerning those crimes, the right to be present at public hearings concerning those crimes and the right to be heard at all proceedings for the sentencing or release of persons convicted of those crimes. (Nev. Const. Art. 1, § 8) This resolution proposes to amend the Nevada Constitution to eliminate the existing provisions of Article 1, section 8, concerning victims' rights and to add a new section that sets forth an expanded list of such rights in the form of a victims' bill of rights. The new section is modeled after the victims' bill of rights set forth in the California Constitution as it was amended in 2008 by what is commonly referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 23, be added to Article 1 of the Nevada Constitution to read as follows:

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family.

(e) To refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents. Nothing in this section shall abrogate a defendant's Sixth Amendment rights under the United States Constitution nor diminish the State's disclosure obligations to a defendant. Nothing in this section prevents a prosecutor from seeking a material witness warrant if it is within the interests of justice.

(f) To reasonably confer with the prosecuting agency, upon request, regarding the case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing, and at any parole proceeding.

(i) To the timely disposition of the case following the arrest of the defendant.

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(l) To full and timely restitution.

(m) To the prompt return of legal property when no longer needed as evidence.

(n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(o) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

(p) To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim.

(q) To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.

2. A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case. The court shall promptly rule on a victim's request. A defendant does not have standing to assert the rights of his or her victim. This section does not alter the powers, duties or

responsibilities of a prosecuting attorney. A victim does not have the status of a party in a criminal proceeding.

3. Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction.

4. A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.

5. The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

6. The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.

7. As used in this section, "victim" means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.

And be it further

RESOLVED, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

~~2. The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~5].~~ No person shall be deprived of life, liberty, or property, without due process of law.

[6] **3.** Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.


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Henry T. Nicholas III: A human tragedy

Henry Nicholas, the flamboyant founder and former CEO of Broadcom, was indicted on securities fraud, conspiracy, and federal narcotics charges on Thursday.

Tech Culture



by **Steve Tobak**

August 23, 2008 11:51 AM PDT

@<https://twitter.com/SteveTobak>

Updated 8:50 a.m. PDT Nov. 16, 2011 to add final paragraph

Updated at 2:50 p.m. PDT to clarify sources.

In case you've been in a sensory deprivation tank for the past few days and missed the news, Henry T. Nicholas III, founder and former chief executive officer of chipmaker Broadcom, was indicted on securities fraud, conspiracy, and federal narcotics charges on Thursday.

One of the indictments was related to **options backdating, the cause of a \$2.2 billion charge Broadcom took last year**. But it was the sex and drug-related indictment that captured the media's attention.

If you **read the indictment (PDF)**, you'll understand why one report said, **"You can't make this kind of stuff up,"**.

ADVERTISING



Henry T. Nicholas III

Rarely does a billionaire and technology industry legend self-destruct in such dramatic and flamboyant style. But there's more to this human tragedy than meets the eye, and it almost surely extends beyond Nicholas.

Childhood issues

From early childhood, Henry seems to have been plagued with a number of issues that may have led to his bizarre adult behavior.

According to a **2004 interview in OC Weekly**, "To me, it has always seemed that things move too slow," Nicholas said. "Nowadays, a kid like me, they'd say he had ADD [Attention Deficit Disorder], but they didn't call it that then. I'm dyslexic, too, but they didn't know that right away, either. I

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spent six months in the retarded kids' class, and they were the happiest days of my life. I got candy bars for not acting out!"

As if that wasn't enough, Henry's mom later kicked her alcoholic husband out of their Cincinnati home, grabbed Henry and his sister, and fled to California, according to the *OC Weekly* story.

And the **Orange County Register** reported that Nicholas' sister was murdered by an ex-boyfriend in 1983.

I'm no shrink, but you don't have to be Sigmund Freud to see that Nicholas' addictive and self-destructive tendencies may be the result of childhood trauma and psychological issues.

The real tragedy, however, is that the problems don't end with Nicholas. His three young children will likely be affected, just as Nicholas must have been by his own childhood chaos.

Family Issues

Long before the latest allegations came to light, Nicholas' wife Stacey filed for divorce. Besides years of neglect by her fiercely competitive, workaholic husband, it didn't help that—according to a **2007 L.A. Times story**—she allegedly caught him with a prostitute in one of his not-so-secret lairs.

In 2003, Nicholas left Broadcom, ostensibly to try to work things out with his wife. But in light of these latest allegations, he appeared to be in a state of denial regarding the double life he'd been leading.

During the 2004 interview, Nicholas portrayed his post-Broadcom family life like this: "I have a wife and three young children. Ask any good husband and father if that isn't a project big and important enough to fill a life. I'm not bored. My problem when I wake up every morning is figuring out how to squeeze in all the things I want to do that day. If you want to call that a problem, it's the same one I've always had."

According to both the *OC Weekly* and *L.A. Times* pieces, three years apart, Nicholas spoke virtually nonstop, jumping from topic to topic, for hours and hours. Was he bored and just enjoying the company? Was he craving the attention? Was he on drugs at the time? Or was that just his personality, ADD and all?

Broadcom Issues

How about life at Broadcom? First there's the effect of the \$2.2 billion charge on shareholders. Then there's the SEC's fraud charges—also related to the same options backdating Nicholas is accused of—against former CFO William Ruehle, general counsel David Dull, and chairman and CTO Henry Samueli.

And one can't help but wonder what it was like working for Nicholas. According to dozens of reports, he was well-known as a party animal with a mercurial temper. You'd think some of his more raucous alleged behavior would have been visible to employees and executives, perhaps at trade shows, conferences, press tours, or on customer trips.

Were folks constantly forced to cover up for Nicholas? Was the old adage: "What goes on the road, stays on the road" in play? Why didn't anybody blow the whistle? Perhaps they did and the board knew about it. I mean, you'd think Samueli - Nicholas' former professor, Broadcom co-founder, and a member of the board - might have had some clue, right? And that raises corporate governance questions.

Unfortunately, all those questions will likely remain unanswered.

Bottom line

In *Walden*, the famous writer-philosopher **Henry David Thoreau** wrote, "The mass of men lead lives of quiet desperation." Well, Nicholas was almost certainly desperate. And the more I study dysfunctional corporate behavior, the more I believe that "the mass of men" applies equally to executives.



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But the word "quiet" implies that these unfortunate souls suffer alone. With respect to Henry T. Nicholas III, that simply was not the case. The tragedy affected many, and at least with respect to his children, may continue well beyond this generation.

Update: All charges against Nicholas, Samueli, and Ruehle were ultimately dropped.

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The two Henry T. Nicholases

By **Robert Greene**

JUNE 11, 2008

Last week began and ended on high notes, sort of, for the billionaire Orange County crusader behind some of California's most recent tough-on-crime ballot measures. On June 2, an anti-gang proposition that he is backing with \$1 million from his personal fortune qualified as the sixth state measure (pdf) on the Nov. 4 ballot. That was joined on Friday by number nine, the centerpiece of his years-long public safety campaign -- a proposed victims' rights initiative (pdf) named for his murdered sister.

The days in between were, well, less triumphant. Indictments were unsealed Thursday by a federal grand jury in Santa Ana, accusing the tough-on-crime benefactor -- Broadcom Corp. co-founder and former chief executive Henry T. Nicholas III -- of securities fraud and multiple drug crimes.

But that sounds so staid. In fact, the 18 pages (pdf) of the more colorful of the two indictments describe a drug-fueled, power-crazed rock star of the tech world who stocked a secret cavern under one of his homes with prostitutes and spiked the drinks of clients and employees with ecstasy. Valium and vicoprofen allegedly gushed into his lairs after cohorts fraudulently obtained prescriptions from a new Oz of narcotics, the pharmacy at the Pavilions grocery store in Newport Coast, just south of UC Irvine (which is enjoying a \$40 million Nicholas donation). There were, it is claimed, cocaine and methamphetamine, private "escorts," death threats, cover-ups and payoffs. News stories have zeroed in on what would be the money shot, if the indictment were turned into an HBO movie: a private jet so thick with his (and his friends') marijuana smoke that the pilot had to put on an oxygen mask. Nicholas comes off as the Elvis of semiconductors, but more unhinged than the King ever was. The Phil Spector of microprocessors, but without the self-control.

The drier 65-page securities indictment (pdf) alleges backdating of stock options without properly reporting the transactions to the Securities and Exchange Commission. Nicholas, currently out on \$3.4 million bail, is due to appear for arraignment Monday in Santa Ana.

Meanwhile, lawyers and reporters are poring over the previously reported details of two lawsuits and a (sealed) divorce proceeding that add to the image of self-indulgent dot-com-era excess. Ironies jump off the pages of legal complaints and campaign donation reports. There is Nicholas' support, for example, of the Orange County Sheriff's "Drug Use is Life Abuse" program. Or the fact that, according to the Los Angeles Daily Journal, he checked himself out of the Betty Ford Center late last month in order to hang out at the federal courthouse in Santa Ana -- to avoid the "perp walk" past TV cameras. Or the shadowy YouTube video that appears to show Nicholas using drugs, according to prosecutors.

Might any of this stuff pose a campaign problem for his two latest anti-crime measures?

Assembly Committee: Legislative Operations and Elections
Exhibit: I Page 1 of 4 Date: 05/09/2017
Submitted by: John J. Piro

<http://www.latimes.com/opinion/la-oe-greene11-2008jun11-story.html>

Short answer: Duh. As in, yes. Nicholas released a statement Monday through the new committee that from now on will be running the campaign, saying he is giving up an active role in the drive to pass the "Crime Victims' Bill of Rights Act of 2008: Marsy's Law."

The news release from Mitch Zak, partner with Randle Communications and lead strategist for the campaign, shows why top communications experts get paid the big bucks: "During the last week," it said, "legal issues arose affecting one of the initiative's major supporters, Dr. Henry Nicholas.... Dr. Nicholas has proactively acted to help the campaign move forward without distraction."

Legal issues indeed.

Much has been written in business pages and on tech-world blogs about Nicholas as the arrogant business and engineering genius who joined with his professor, Henry Samueli, to build Broadcom, then gave it all up in 2003 to try to save his marriage and dote on his kids. There has been political coverage, as well, of the mastermind and pocketbook behind Republican-sponsored laws that stand no chance in the Democratic-controlled Capitol but are routinely embraced by California voters.

But there has been very little cross-referencing, leaving a bifurcated picture of the man. As the criminal matters work their way through the courts there will doubtless be much more in the news about the Broadcom bad boy Henry T. Nicholas; here is an abbreviated sketch of the direct democracy Henry T. Nicholas.

He is the son of an alcoholic lawyer, according to Times stories. His mother divorced his father and married journalist-turned-screenwriter Robert Leach; Henry and his sister Marsalee grew up with their mother and stepfather in 1960s Malibu. He studied engineering at UCLA.

Marsy was a senior at UC Santa Barbara when her ex-boyfriend, Kerry M. Conley, shot her to death. Conley was convicted of second-degree murder and sentenced to 17 years to life in prison.

Leach, the slain woman's stepfather, co-founded Justice for Homicide Victims in 1984, two years after California voters adopted Proposition 8, the Victims' Bill of Rights. He remained president of the group for most of its existence until his death March 30. His widow (and Henry T. Nicholas' mother), Marcella Leach, remains the group's executive director.

Nicholas became suddenly rich and famous in 1998, when Broadcom went public and he and more than 200 of his employees became instant millionaires.

In 2000, he opened his wallet for Proposition 21, one of 20 measures on the March ballot, which increased punishment for gang-related felonies, carjacking, witness intimidation and drive-by shootings. It also authorized wiretaps for certain gang activities. California voters passed it overwhelmingly.

It was the latest in a string of tough-on-crime initiatives passed by voters who believed that the state's justice system coddled criminals. The pendulum appeared to be swinging back by 2004, when Proposition 66 -- a measure to soften the decade-old three strikes law -- consistently polled ahead prior to the November election.

But Nicholas pumped \$3.5 million into the no-on-66 campaign in the final weeks before the election and helped defeat the measure.

In 2006, he donated to the campaign for Proposition 83, California's version of Jessica's Law. Key provisions include mandatory life sentences for many forcible sex acts on children, eliminating good-time and work-time credit for sex offenders, and requiring lifetime electronic monitoring of convicted sex-offense felons.

In speaking to The Times' editorial board in favor of Proposition 83, state Sen. George Runner (R-Lancaster) said he understood the frustration many Californians felt at facing so many ballot measures election after election. But he said it paled in comparison with the frustration they feel at Democrats in the Legislature, who will not allow Republican anti-crime legislation to even get a hearing in Sacramento. He may have been right; voters passed Proposition 83 overwhelmingly.

This November's ballot brings two Nicholas measures: The Safe Neighborhoods Act, an anti-gang initiative sponsored by Runner, appropriating hundreds of millions of dollars for crime-fighting programs, softening rules against hearsay and establishing a host of programs to deter crime and punish criminals; and Marsy's Law, also known as the Victims' Rights Act of 2008, to greatly restrict an inmate's access to parole and to raise to constitutional levels many provisions adopted into law by voters 24 years ago.

Nicholas gave \$1 million to the anti-gang measure, and, so far, \$4.8 million to the initiative named for his sister.

That latter measure has obvious personal resonance with the billionaire, and not just because of his sister's death. His mother has spoken of seeing Conley, the killer, in the grocery store, free on bail, shortly after Marsy Nicholas' funeral. (Conley died in prison last year.)

Along the way, Nicholas donated \$1,000 to George W. Bush's first presidential campaign, \$1.5 million to Gov. Arnold Schwarzenegger and his political committees, and \$11,200 to former Gov. Jerry Brown's successful 2006 campaign for attorney general. That latter donation seems out of place, but in fact Nicholas worked closely with Brown, then mayor of Oakland, to defeat Proposition 66.

So what becomes of the two most recent measures without the considerable financial support of Henry T. Nicholas? And how badly will Nicholas' own criminal proceedings hurt the effort? And, just as an ironic twist, how will Nicholas' alleged drug problems affect a campaign from the other side of the ballot-measure spectrum -- an initiative to end prison time for drug offenders? It wouldn't directly help Nicholas, even if it passed, because he is charged with federal crimes in federal court. But it could make the next several months more interesting.

Runner has released a statement saying he intends to move full-speed ahead on the anti-gang measure. Assemblyman Todd Spitzer (R-Irvine), with whom Nicholas has worked to create and fund a crime victims' memorial at the Capitol, has said the same about Marsy's law.

California voters are a quirky bunch and hard to predict. They could sympathize with Nicholas as a suspected drug offender and go to the polls to pass the sentencing reform. Or they could sympathize with Nicholas as a crime victim's brother and go to the polls and pass his two measures to toughen the lot of convicted criminals. Or all of the above. Or they could finally tire of legislating by initiative.

But don't count on it.

Robert Greene is a member of The Times' editorial board.

Send us your thoughts at opinionla@latimes.com.

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This article is related to: Crime, Law and Justice, Crime, Elections, Politics and Government, Citizens Initiative and Recall, Gang Activity, Science

H I Y E

Sex, Lies, and Underground Lairs

DR. NICHOLAS AND MR. HYDE

Henry Nicholas isn't just another tech-boom billionaire charged with backdating stock options. All the drive, arrogance, and aggression he poured into building microchip-maker Broadcom—one of the major success stories of the Internet Age—morphed into an increasing obsession with sex and drugs, according to federal prosecutors. The author investigates the allegations about Nicholas's out-of-control world: the parade of prostitutes, the spiking of clients' drinks with Ecstasy, and the secret lair he built underneath the Orange County mansion he shared with his wife and kids.



BY BETHANY MCLEAN
NOVEMBER 2008



Assembly Committee: Legislative Operations and Elections
Exhibit: J Page 1 of 12 Date: 05/09/2017
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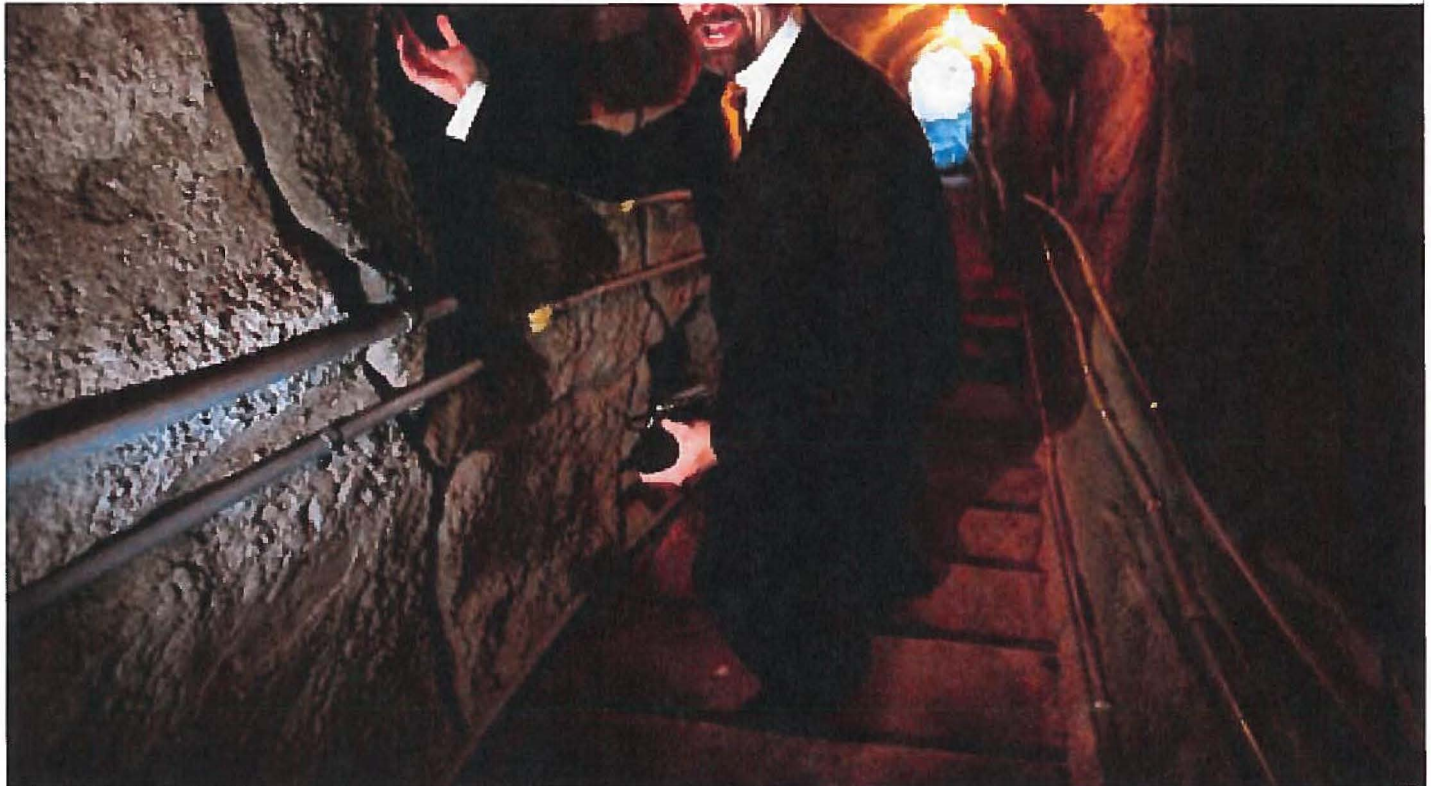
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BY NICK BILTON



THE 15 MOST ABSURD

BY VANITY FAIR



Step into my parlor: Henry Nicholas in the passage under his Laguna Hills mansion. By Mark Boster/L.A. Times.

On April 12, 2008, a funeral was held at the Westwood Hills Christian Church, which is across the street from U.C.L.A., for a man named Robert Warnes Leach. Leach was a screenwriter and teacher who was best known for his scripts for the television series *Perry Mason*. But the obituaries also prominently mentioned the fact that Leach's stepson was Henry Nicholas, the 49-year-old co-founder of a staggeringly successful semiconductor company called Broadcom. Nicholas is one of the world's wealthiest men—this year, *Forbes* put his net worth at \$1.8 billion.

At a dinner held that evening at the Beverly Wilshire hotel, Nicholas, who helped plan the event, gave a poignant speech and showed the assembled crowd his favorite episode of *Perry Mason*. Leach and Nicholas's mother, Marcella, were married when Nicholas was a young boy, and although Leach had been ill for several years and died at 93, Nicholas, say friends, was distraught about the death of the man he called his father.

A few days later, Nicholas's personal lawyer, Bill Hake, announced that Nicholas—who had a reputation as a hard-core partyer—was checking himself into the Betty Ford Center for a month of alcohol rehabilitation. "A recent blood work-up showed a liver panel well out of the normal range," said Hake. He added, "Nick is seeing the value of life, weighed against the death of his father."

But Nicholas, whose full name is Dr. Henry Thompson Nicholas III (he has a Ph.D. in electrical engineering), also saw something else coming. For at least the past year, he had worried that federal prosecutors were investigating him, and indeed they were. Less than two months after the funeral, on June 5, the Justice Department unsealed not one but two federal indictments. Nicholas was charged with securities fraud for his role in an alleged scheme in

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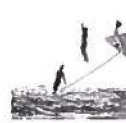
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declarations that make the government's allegations seem like the PG-rated version of affairs. Among them: that Nicholas built a sprawling den of iniquity under his multi-million-dollar Laguna Hills mansion. "He wanted to live above ground with his wife and three children, with the option to go below ground to immerse himself in his cocaine, ecstasy, Viagra, speed, prostitutes, and party friends," alleged the contractors who helped build what they called "the Lair."

On June 5 in Santa Ana federal court, prosecutors argued that Nicholas, who is six feet six inches, should be denied bail due to his propensity for witness intimidation (he has said he "could have people killed," according to prosecutor Ken Julian), the ease with which he could flee (Nicholas owns an Italian-made Agusta helicopter as well as a Gulfstream IV and a Cessna Citation), and the potential threat posed by what the judge referred to as his personal army. (Nicholas's personal security manual requires that three armed guards—who are often former law-enforcement or military men—patrol his home.) Instead, the judge released him on \$3.4 million bail and allowed him to return to a \$63,000-per-month program at a luxury rehabilitation center called Cliffside Malibu. Now Nicholas, who in the past couldn't be silenced (he once proudly announced, "I am a media-relations nightmare!," and he was), has been shut down by his lawyers. He would not comment for this story.

Indeed, few would comment on the record, partly because Nicholas has a reputation for being vindictive. (As one person told me, "If I talk to you, I either get a date with the U.S. attorney or a date with Nicholas's lawyers.") A few loyal friends say that Nicholas is being wrongly prosecuted, and that the numerous lawsuits filed against him are just "extortion," as Chris Berman, a former Navy seal and friend, puts it. (And it does seem that there is some of that.) But, for the most part, there's a surprising lack of surprise—or sympathy. "I don't know if the stories are true, but they are believable if you know him," says one person who used to work with him. "He deserves whatever he gets." "Do you feel sorry for the shark at the end of *Jaws*?" asks another person who knows Nicholas. A former Broadcom employee says that on the day the indictments were unsealed his in-box was flooded with messages from his former co-workers and industry people. We knew it!, they all said.

If the allegations are true, the saga of Dr. Henry Nicholas is sex and scandal writ large. Pry under the shocking surface, though, and you also find even more unsettling questions. What secrets can lurk beneath the smooth façade of a successful corporation? What can happen if someone with the imagination of a sex-starved teenage boy and no personal restraints can fuel his fantasies with a billion dollars (and then some)? And, finally, what is it about human nature? "Henry Nicholas is a paradox: a man with a self-destructive personality who created something great," says Roger McNamee, the well-known technology investor, who met Nicholas in the early years of Broadcom. Because no one suggests that Broadcom—whose chips are used in everything from Apple's iPhone to Nintendo's Wii, has revenues approaching \$4 billion, and employs 6,800 people—isn't something great, or that it would have existed without Henry Nicholas. "Every character trait is a double-edged sword," says a former Broadcom executive. "The strongest point has a counterpoint."

The arraignment of Henry Nicholas on criminal charges wasn't the first time he burst onto the scene in a blaze of publicity. On April 17, 1998, in the middle of the Internet frenzy, Broadcom—which stood out from the dot-coms of the day by virtue of the fact that it had actually produced profits—went public at \$4 a share. The stock more than doubled, and by the end of the trading day, Nicholas and his co-founder, a quiet man five years his senior named Dr. Henry Samueli, also an electrical-engineering Ph.D., were each worth \$600 million. "One of the hottest initial public stock offerings ever," raved *The New York Times*.

These were the days when technology stocks only went up, and some six months later, Nicholas called a venture-capitalist friend. "I'm a billionaire! This is amazing! It worked!" he exclaimed, this person says. "He was like a kid. I said, 'Don't take it for real. It ain't real.'" Nicholas's friend didn't mean that the money itself wasn't real, but rather that it could give life a dangerous aura of unreality.

In some ways, Broadcom—which makes chips that enable voice, video, data, and multi-media to travel at high speeds to just about any destination, from cable set-top boxes to wireless networks—is a classic high-tech start-up story. In 1991, Nicholas and Samueli each invested \$5,000 and went to work in Nicholas's Redondo Beach condominium. Nicholas was the C.E.O. while Samueli was the chief technologist.

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During Nicholas's years at U.C.L.A., his family suffered a tragic loss. In November 1983, Marsalee was murdered by an ex-boyfriend, who had been stalking her. (He threatened to commit suicide, then shot her in the head when she tried to stop him.) Marcella and Robert Leach, along with the late Ellen Griffin Dunne, ex-wife of *Vanity Fair* special correspondent Dominick Dunne and mother of Dominique Dunne, also killed by an ex-boyfriend, founded Justice for Homicide Victims, which fights for victims' rights. Nicholas never talks about Marsalee's murder, even to close friends, but over the years he has devoted time and considerable money to the cause.

Henry Nicholas met Henry Samuelli in the early 1980s when the two men were working at a defense contractor called TRW. (The military is often on the leading edge of whiz-bang technology.) Samuelli was also the brilliant product of middle-class parents. He was born in Buffalo, New York, to Polish Holocaust survivors, and got his Ph.D. from U.C.L.A. in 1980 at age 25. Samuelli, who is an academic at heart, left TRW in 1985 to become a professor. He persuaded Nicholas to join him as his first Ph.D. student. (Nicholas, who was more interested in business, was finally granted his Ph.D. from U.C.L.A. in 1998, just before Broadcom went public. Dissertation title: "Architectures, Optimization Techniques, and VLSI Implementations for Direct Digital Frequency Synthesizers.")

When Nicholas was at TRW, he met Stacey Feller, a fellow electrical engineer five years younger than he. She grew up in Los Angeles, and people who know her describe her as "very nice"—the same words people use to describe Henry Samuelli. Like Nicholas, she was tall and thin. She seemed innocent and demure—one friend described her as "super naïve"—and was athletic enough to keep up with Nicholas on long bike rides. In 1987, the two were married. In 1993, the couple's first son, Brett, was born, followed by a second son, Matthew, and in 1998, a daughter, Shelby.

In 1988, Samuelli began to consult part-time for another start-up company, PairGain Technologies. He brought Nicholas in as the director of micro-electronics. Nicholas was a controversial figure. He has said that he left PairGain because the company didn't want to pursue his ideas. But three former PairGain employees with knowledge of the situation say that is not the whole story. PairGain discovered that Nicholas had started cultivating his own business interests on company time, they say. Nicholas left the company, he has admitted, "with a lot of hard feelings all around."

Man and Superman

Nicholas also developed a reputation for extreme arrogance. One PairGain employee used to say that he was convinced that one day he would pick up the paper and see that Nicholas had been found, a pile of bones and flesh, at the bottom of a 10-story building—not because he had committed suicide, but because he had tried to fly.

But it probably took someone with limitless belief in himself to start Broadcom, which competes in an industry dominated by Intel—whose longtime C.E.O., Andy Grove, coined the motto "Only the Paranoid Survive." Nicholas, from the beginning, did things his own way. He based the company not in Silicon Valley, where everyone else was, but in Orange County, the sun-drenched suburban sprawl just south of Los Angeles. At a time when dress codes were ostentatiously casual, Nicholas wore three-piece suits—and insisted that others at Broadcom suit up as well. His imperious manner led some Wall Street analysts to call him "Czar Nicholas."

Nicholas told others at Broadcom that he was a rare personality type that some psychologists call "the Mastermind." (The Myers-Briggs and Keirsey personality tests, which are big in M.B.A. circles, group people into 16 different personality types, to which Keirsey gives labels, such as the Healer and the Inspector; Masterminds make up just 1 percent of the population.) Masterminds are supposed to be calculating perfectionists who have a disregard for authority—as well as for the feelings of others. "Great entrepreneurs generally have a single-minded focus," says McNamee. "Often they don't realize there might be another point of view."

At least in the early years of Broadcom, Nicholas's arrogance was accompanied, maybe even exceeded, by his work ethic. One person who worked with Nicholas says that he slept three or four hours a night, max. "Nick was driven to a fault," says this person. "But because he works those hours, he can deliver more, faster, better than anyone."

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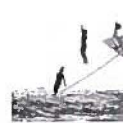
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meetings any hour, any day of the week, at his whim. He liked to invoke a military phrase, R.H.I.P., or “Rank has its privileges.”

Nicholas ruled by fear, not love. “He could get really nasty,” says a former employee. “He was like a drill sergeant. He’d get one inch from your face and use his body to the full effect of what a large body can convey.” Once, at a biweekly meeting for executives, this ex-staffer recalls, Nicholas was displeased with the assistant controller’s report. So he rolled up the papers into a thick bar and smacked the guy over the head with it. “You could describe my approach as scorched earth,” Nicholas told a reporter in 2000. “It can be brutal, but my job is to make sure that if we’re going to enter a market, our employees are ready to take on the sacrifices in their lives that’ll be necessary to win.”

And Nicholas did his best to look the part of the alpha-male C.E.O. Thanks to an aggressive workout regimen, he bulked up, and he grew the nerdy handlebar mustache out into a goatee just when goatees were becoming hip. At a 1999 press conference announcing a \$1-million-plus donation to the University of California at Irvine crew team, he challenged the team captain to a spur-of-the-moment pull-up contest. Nicholas won. He was the geek who became Superman. If there was an element of angry teenage boy—he liked to joke they’d almost named the company Broads.com, and he bragged to reporters about his passion for heavy-metal bands like Metallica and Korn—well, great entrepreneurs were supposed to be eccentric.

The balance at Broadcom was to be provided by Samueli, who led the engineering team. Stock analysts called the two men “good Henry and bad Henry,” or “white hat and black hat.” In a 2000 interview, Samueli shrugged off Nicholas’s reputation. “Nick’s gained more confidence to be more brash, no question,” he said. “People accept it. We all accept it.”

In truth, no one could control Nicholas. Samueli, say many people who worked with them both, was a non-confrontational personality. One person remembers a time when Nicholas stormed into Samueli’s office, which was right next door to his own. He was angry about some slight offense, real or imagined, and he “ripped him [Samueli] out like he was a five-year-old,” says this person. “It was Satan and the nice guy, and Satan was running the show.”

But it all seemed to work, at least for a time. Nicholas was “like a cult leader,” his wife, Stacey, allegedly told one of his personal assistants. Cody Acree, a stock analyst at Stifel Nicolaus, who has covered Broadcom since 2000, says, “At the end of the day, it’s about making money, and if he’s delivering, then it’s hard to question the policy.”

Money is certainly part of the reason that Broadcom employees took Nicholas’s brutality. It wasn’t that Broadcom paid high salaries. Quite the opposite: it capped salaries at \$110,000, which was less than competitors paid. But the company made up for it with the currency of the age: stock options. At one point in early 2000, Broadcom offered an Intel engineer it wanted to hire an amazing \$9 million worth of them, according to a lawsuit Intel filed.

That Broadcom was aggressive with stock options wasn’t a secret, but the precise mechanics of the operation certainly were not well understood by outsiders. In many cases, Broadcom made sure its options were worth real money on the day they were granted, alleges the government. They did so by choosing a day in the past at which the stock had closed at a lower price than the grant date. An incident that later became central to the government’s allegations involved the hiring of an engineer named Mehrdad Nayeibi in the spring of 1999. Nayeibi claimed he was promised a grant of 120,000 options priced at \$88.375, which was Broadcom’s stock price when the company was getting serious about making him an offer. But by the time he actually joined the company, his options were instead priced at \$95.75. Nayeibi e-mailed Nancy Tullos, Broadcom’s vice president of human resources, to complain, saying that the lower price had been a “major key deciding factor” in his decision to accept a job at Broadcom. According to a plea agreement Tullos later entered into with the government, Broadcom’s options committee—which consisted of Henry Nicholas and Henry Samueli—granted Nayeibi his options at the lower price. It was Nicholas, the Securities and Exchange Commission would later allege, who was the “final decision-maker and the driving force behind Broadcom’s options backdating.” (Samueli’s defense has maintained that Samueli reasonably relied upon management and other professionals to take care of the proper accounting of options.)

This would all be fine if Broadcom had told shareholders what it was doing. Under the tortured rules that governed stock-option accounting at the time, if you granted an option at \$10 a share, and the stock was trading at \$10 a share, you didn’t have to reflect a compensation charge. But if you chose a date

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The Henrys began not only spending money but also giving it away. Samueli donated \$30 million to U.C.L.A.'s engineering school and \$20 million to U.C. Irvine's engineering school, both of which were renamed in his honor. Later, Samueli and his wife, Susan, paid \$70 million to Disney for the Anaheim Ducks hockey team. Nicholas began donating to political campaigns—he has been one of Arnold Schwarzenegger's top donors. He bought an aviation company called Prestige Air, which owned three jets and a helicopter. (Prestige Air became part of a lawsuit with the I.R.S., which contended that the Nicholases owed some \$4.4 million in back taxes and penalties in part because they improperly wrote off the losses from Prestige Air.) Nicholas also bought toys, among them a Harley-Davidson and a black Lamborghini Diablo.

And the Nicholases began to renovate their house. Since the mid-1990s, they'd lived in one of the nicest areas of Laguna Hills, a neighborhood called Nellie Gail Ranch that features 20 miles of equestrian trails, and where a 5,000-square-foot house is considered small. A week after Broadcom's I.P.O., they bought a much bigger property a few doors down in the same cul-de-sac—called Rodeo Circle—for \$1.7 million. They immediately began a remodeling project. The initial budget was \$400,000, but the projected bill would balloon to more than \$30 million, according to a lawsuit the contractors drafted later—and the project would become the physical manifestation of the dark fantasies in Nicholas's mind.

If You Build It, They Will Come

Imagine, if you will, a secret warren of rooms filled with any amenity you could ask for—from top-of-the-line sound equipment to a Jacuzzi—decorated in an extravagant style that could be described as Harem Fantasy Gone Wild. The ceilings are over 12 feet high. One room has a central column covered in 24-karat gold leaf. A series of large buttresses, also covered in gold, radiate from the central column, which in turn is surrounded by seating for 10. Fabulous materials and artifacts cover every square inch: brocade from Spain, lustrous red velvets, arches carved in India, statues of Buddha and Shiva, Persian rugs. One person who worked on the space is almost at a loss for words when asked to describe it. "It was so over the top," he says. "You have never seen anything like it."

"Nick wanted me to be as creative as possible," says Russ Butler, the artist and designer who decorated the space. "More and more was better." He adds: "I wish the whole world could have seen it."

While the average investor in Broadcom never heard a whisper, by as early as 2000 the Wall Street community was rife with rumors about Nicholas. A story began to make the rounds that, during a meeting with a major investor, he had a nosebleed—which was interpreted as a symptom of a cocaine habit.

Nicholas's former assistant at Broadcom, a woman named Beth Kuhns, told the F.B.I. that when she began working for him, in 1998, he was "controlling and detail-oriented," and required her to work "long and intense hours," but was otherwise normal. But, she said, he soon began requiring her to withdraw cash from his bank account. He wanted to have at least \$10,000 in a locked desk in his office or in a black bag that he carried with him. Once, he gave her an envelope with "thousands of dollars in cash in it and directed her to meet a woman in Broadcom's offices." The woman took the envelope and gave Kuhns another, which, in its drug-trafficking indictment, the government says contained "controlled substances."

While the government's contention that his drug use amounted to a narcotics conspiracy—i.e., distributing drugs—has not been proved, it is hard to deny that Nicholas has used drugs. Maybe his problems were brought on by his desire to operate at a superhuman pace. Maybe, as one person who hung out with him says, "his money came too fast and it opened the door to things he wanted. He was married, he had kids, but he saw something else out there that money could get him. He was kind of a geeky dude. I don't see him going out with girls in high school, and now here he is with the world at his feet." Or maybe a woman named Mirjana Dumnjak, who knew Nicholas during this period, puts it best. "You know what they say about borderline geniuses?" she asks. "They're also borderline crazy."

Whatever it was, Nicholas changed quickly. Within about a year and half of Broadcom's I.P.O., he went from what one neighbor says was a "super-nice guy who just wanted to make friends" and who had barbecues in his backyard to someone who was "just out there." Says this person, "I think he's a victim of bad judgment and bad friends."

Whether his friends were a bad influence or not, it is true that Nicholas started hanging out with some new people at that time. Among them was a charismatic contractor named Roman James, who began the renovation project at the Nicholases' in the spring of 1998. (James is Dumnjak's ex-

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In a declaration taken in a lawsuit filed later, Nutton said that he, Nicholas, and James began riding Nicholas's Harley-Davidsons together and "partying quite extensively," both at the jobsite and on frequent excursions. They took Nicholas's plane to Las Vegas, where Nicholas eventually acquired a condominium on the 32nd floor of Turnberry Place. Nicholas even bought James a car: a red Ferrari. The contractor, says one observer, "was living very high on the hog."

Dumnjak, who says that she accompanied the men to Las Vegas on one occasion, recalls that when Nicholas hired prostitutes he "was like a guy who hasn't eaten in 10 days and finally saw a steak.... He was kissing them like a high-school guy would kiss his girlfriend." According to Dumnjak, she once asked him why he behaved this way, given his family and his apparent respect for his wife. ("He was always very complimentary of her," she says.) "I love my wife, but it's just something I want to do," he replied.

James and Nutton weren't the only members of Nicholas's growing entourage. He hired Craig Gunther, a U.C.L.A.-trained engineer who had a law degree, to manage his personal affairs and money. Within a few years, Gunther and his wife moved into what had been the Nicholases' first house on Rodeo Circle. In the fall of 1999, Nicholas also hired as his personal assistant a young man named Kenji Kato, who was getting his joint M.B.A. and J.D. from Pepperdine University, in Malibu. Kato helped arrange what he described as "lavish events, dinners, concerts, parties fit for only Billionaires." As part of a lawsuit he would later file, Kato observed that "it was normal for him [Nicholas] to attempt to have sex with as many women as possible."

It seems that Nicholas eventually became disillusioned with some of the people who wanted to be his friends. In 2004, he told a reporter, "There is a whole cottage industry of parasites who make it their business to be friends of billionaires. The problem is that because they have an agenda, they are often better with you than your real friends, who don't know how to act with you anymore."

But that was later, and for a short period it was all just a party. To celebrate his 40th birthday, in October 1999, Nicholas paid the band Orgy—an L.A.-based group that described itself as "nu Metal"—\$50,000 to play. He had a huge stage built at the Rodeo Circle house. There were gigantic ice sculptures, and the guests included bankers, lawyers, people from the neighborhood, and what one attendee describes as "women by themselves dressed scantily with a lot of makeup."

"It was the most surreal scene ever," says another attendee. Before the party, according to one pal, Nicholas bragged that nine different women he was dating—none of whom knew about the others—were coming. At one point, he jumped up on the stage, ripped off his shirt—"He's cut and he knows it," says another attendee—and sang with the band. He had one request: "My birthday present from you all to me: Please forget this night."

Stacey didn't appear to relish her new lifestyle. She did have breast implants, say three people who know her. "She was trying to be more of the cool chick," says Dumnjak. But Stacey, whom everyone describes as unpretentious, refused to drive her new Mercedes, instead sticking with an old forest-green Chrysler minivan. She still shopped at Target, and told one person that she'd trade it all in to be back in the condominium in Redondo Beach and have her husband home the way he used to be.

There's a twist to Nicholas's story, according to some of the allegations against him, that makes it something darker than a tale of a man whose personal eccentricities got the better of him. The government and former employees allege that he thought he could use drugs and prostitutes to get an advantage in business. As prosecutor Andrew Stolper put it, Nicholas was "not in the business of making a living by dealing drugs. He was in the business of using drugs for his business." Kenji Kato, who helped organize events for Broadcom, also alleged in his lawsuit that he would see Nicholas put "powdered ecstasy pills into the drinks of his customers. I would see him usually carefully measure the dosage.... I had to look the other way when Nicholas secretly 'spiked' clients, prospective clients and third parties' drinks with illegal drugs."

Mehrdad Nayebe—the engineer who was granted the stock options—contended in a draft lawsuit in late 2000 that Nicholas also "had a practice of hiring prostitutes to 'greet' visiting customers, other business associates, and for himself." Nicholas called the prostitutes "professional saleswomen," says another person who did business with Broadcom. One former executive recalls getting out of the elevator at Broadcom's offices and saying to himself, "She's a pro!" He adds, "I felt like I just walked out of a Las Vegas nightclub. Am I really on the third floor of an office building in Irvine?"

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shareholders' pockets—also with the provision that he keep his allegations quiet. (Broadcom has noted that it routinely includes confidentiality provisions in employment agreements, and has said that the core of each of these settlements had nothing to do with allegations about Nicholas.)

Nicholas's company was also slipping by this time—badly. The dot-com bubble had burst in 2000, and what Nicholas later called the “worst downturn in semiconductor history” was well under way. Broadcom lost money in 2000, 2001, and 2002. Its stock price—as high as \$182.42 on August 24, 2000—began to plummet and eventually hit a low of \$6.47 on October 7, 2002. One board member later told *The Wall Street Journal* that “no one was really at the wheel.”

But if neither Broadcom's performance nor Nayebi's and Kuhns's accusations jolted the board into action, something else may have. They found out about the lair.

It had started innocently enough. Dumnjak claims it was her idea for a tunnel leading down to a series of interconnecting rooms between the house's library and the gym, where Nicholas was building a 2,000-square-foot sports bar he would call Nick's Café. In the library, which was decorated in dark custom-carved woods and green granite, a hinged panel opened toward the passageway. The tunnel, says Butler, had a “coolness factor”: the faux stone walls had impressions of skulls carved into niches, which were lit by candelabras. “It was that castle-y look that guys like,” he says. Butler, who still counts Nicholas as a friend, says that in 2000, after a wild party was shut down by neighbors' complaints, the project was expanded to create a place where Nicholas could carouse in private.

Butler agreed to comment for this story because he is upset that his work, which he says was “beautiful,” is being described as a sex lair. But in their lawsuit, the contractors alleged it was exactly that. In August 2000, they said, Nicholas decided, unbeknownst to his wife, to expand the tunnel into a “secret and convenient lair in which he could indulge his appetite for illegal drugs and sex with prostitutes.”

Building the lair presented an engineering challenge because the Nicholases' house is on a hill that cuts sharply down toward the horse trail behind the house. Nicholas grew frustrated with the slow pace of the secret construction, and he took Stacey to Hawaii for a week's vacation. During that time, hundreds of men worked around the clock.

The contractors designed a multitude of entrances and exits, says one person familiar with the construction: a staircase in the sports bar that lifted up, *Munsters*-like; an entrance covered by rock near the wine cellar; even an exit onto the horse trail, disguised by a faux shed made to resemble other manure-pickup sites on the trail.

Not surprisingly, neighbors, who had grown impatient with the construction, began to complain, particularly when they found their access to the horse trail blocked by armed guards. Says one, who thought maybe a helicopter pad was being built, “It was hard to miss that something was going on, but no one knew what.” They called Laguna Hills city officials, who discovered that there was no permit for the construction. The project was promptly shut down. When a *Los Angeles Times* reporter called Nicholas about the neighbors' complaints, he explained he was building a pump house to deal with water overflow along the horse trail. “I wanted to make the horse trail around our property the nicest in the whole community,” he told the reporter.

When construction was halted, Nicholas, say the contractors, decided to build a backup. He rented space in a warehouse in a gritty industrial district of auto-body shops about a five-minute drive from his house. Inside, he had the contractors build an exact replica of what he wanted under the Rodeo Circle house. Because the space under his house was irregularly shaped, the contractors even built out the rectangular warehouse space to identical irregular specifications, says one person familiar with the work. This was the Ponderosa, or “the Pond,” as it came to be known. According to Butler, who says the décor was inspired in part by his visit to Burma, a visitor would enter through a passageway where the ceilings were tented with fabrics. Jewel-like hanging lamps spotlighted a large brass statue of Ganesh. Then you would step down into a large octagonal room dominated by a central column. The ceiling of that room was a gilt lattice with a star pattern, backlit with sophisticated lighting that could strobe and change color. Butler used mostly red and gold in the decorating scheme because, he says, it was “masculine and very imperial.” There was a flat-screen TV that was one of the largest available at the time, and a bar made from an antique European buffet re-covered in granite.

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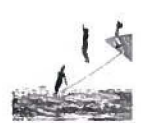
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It would have been hard for a smart wife to figure out something was up with her husband—and she headed over. There she “caught Nicholas having sex with a prostitute while high on drugs,” said the contractors, in a red-and-gold room with a carved wooden ceiling and a gigantic bed. She filed for divorce.

Soon, a furious wife wasn’t Nicholas’s only problem. In the fall of 2002, a group of seven contractors who had worked on the project, including James, hired a lawyer to draft a lawsuit against Nicholas. The contractors contended that Nicholas used “manipulation, lies, intimidation, and even death threats” to stiff them on the bulk of the money they were due. He also allegedly told them he’d have them killed if they ever talked about him or the work they did.

The lawsuit wouldn’t become public until years later. Broadcom’s shareholders never knew. But Broadcom’s board did, because the contractors also named Samueli and Broadcom itself in the lawsuit. Perhaps they thought that the pressure those parties would bring to bear on Nicholas increased their chances of getting paid, and it seems it did. James Traut, the lawyer for the contractors, recalls an emergency Sunday-afternoon meeting with lawyers for Nicholas, who had just returned from celebrating his birthday in Spain. Nicholas settled the complaint for roughly \$3 million, says one person.

Paying the Piper

On January 23, 2003, Nicholas announced his resignation to investors on a conference call. “Effective today I have resigned as president and C.E.O. of Broadcom. This has been a difficult personal decision for me, and one that has been driven entirely by personal issues relating to my family separation and divorce.”

That was no lie. After all, Nicholas did have serious family issues. But it doesn’t appear to be the whole truth, either. Some members of Broadcom’s board had grown disillusioned with Nicholas due to his performance, and the company started exploring the idea of looking for a new C.E.O. in the fall of 2002. In November, Broadcom appointed a board member, Alan E. “Lanny” Ross, as interim chief operating officer. Within a few weeks of Ross’s arrival, the company laid off 500 people to cut costs. Around the same time, it found out about the contractors’ suit. Nicholas took time off in December and January before finally announcing his departure in late January.

Publicly, Nicholas and Stacey talked about reconciling, but in 2006, divorce proceedings began in earnest again. She stayed in the Rodeo Circle house. The lair was demolished. Nicholas moved to a Tuscan-style mansion in a gated community in Newport Coast, just to the north of Laguna. The divorce has clearly been acrimonious, which isn’t surprising, given that the two have to divvy up, among other assets, 32.9 million shares of Broadcom, worth more than \$720 million at the time of this writing. The divorce file has been sealed, but according to the *Los Angeles Times*, it contains “competing allegations of drug abuse and infidelity.” In 2006, Nicholas filed a petition alleging that Stacey had formed a company called Captain Enterprises “to compete directly” with several companies Nicholas owned. These new companies existed to manage Stacey and Nicholas’s personal affairs. Nicholas accused Stacey of hiring his people and requested that she not waste the assets of their joint trust. The petition was eventually dismissed.

Nicholas seems to have continued on a downward spiral after leaving Broadcom. Kenji Kato, in his lawsuit against Nicholas, alleged that over the seven years he worked for Nicholas he struggled with Nicholas’s “increasingly abusive and intolerable conduct” as his “sexual cravings and drugs overpowered his life.” He said, “At times, Nick could not remember what he ordered me to do the day before ... his thought processes were impeded by his constant drug abuse.” Kato added, “It was very sad to see him like this, the Nick that I first met was much stronger and healthier than the person I ultimately came to work for.”

Like some of the other members of Nicholas’s entourage, Kato doesn’t seem to be a saint. He has admitted that he has used drugs, too, although he claims that the “first time I used cocaine was when Nick shoved a tiny spoon up my nose because I was falling asleep while he was talking to me.” After he quit working for Nicholas, in the spring of 2006, his lawyer presented a demand for \$9 million, telling Nicholas that, if he did not agree, Kato would go public with his allegations. Nicholas appeared to settle the suit for \$3 million but then backed out of the negotiations and filed his own lawsuit against Kato alleging extortion and asking for a restraining order. Kato ended up filing his case anyway, in November 2006.

Four other people who worked for Nicholas filed supporting declarations in Kato’s lawsuit, all of which paint a sordid picture of life at the Newport Coast house during 2005 and 2006. Gerald Wada, who worked for Nicholas for four months in 2006, says that he was regularly “ordered to fill up up to 20 balloons of nitrous oxide and deliver them to Dr. Nicholas, or when I was required to clean up after Dr. Nicholas, I frequently found remnants of usage of

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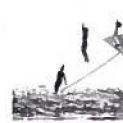
EXCLUSIVE: JOE AND MIKA ARE GETTING HITCHED

BY EMILY JANE FOX



EXCLUSIVE: THE LEAKED FYRE FESTIVAL PITCH DECK IS BEYOND PARODY

BY NICK BILTON



THE 15 MOST ABSURD

BY VANITY FAIR

THREE STRIKES rule, by which someone who has been convicted of two violent crimes can be sentenced to die for a third felony. That's when Nicholas, at his mother's urging, got to know Steve Ipsen, a veteran prosecutor who was doing his best to thwart Proposition 66. The measure looked like it was going to pass until Nicholas got involved—the weekend before the Tuesday, November 2, vote. “When Nick is into something, he's into it,” says Ipsen, and indeed, over a frantic weekend, the two men cut a deal to take over the radio airwaves—paid for by some \$3 million of Nicholas's money—and put together two ads. Nicholas even sent his plane to Oakland to get former California governor Jerry Brown to record an ad. The ballot issue, which was supposed to pass by a considerable margin, didn't. “The truth is: he did it,” says Ipsen about Nicholas.

A few years later, on September 25, 2007, Nicholas flew his private jet to Soledad for the parole hearing of Kerry Michael Conley, who was convicted in 1985 of the murder of Marsalee. At least 100 members of victims' groups also protested Conley's parole in front of the prison. (The parole was denied, and Conley died last winter in prison.) On the way home, Ipsen introduced Nicholas to a woman named Shari Martin, whose son had been murdered, and who was starting her own chapter of a group for relatives of homicide victims. Nicholas promptly wrote her a check for \$10,000. “I didn't ask,” she says. “He volunteered it.” She sees a very different Henry Nicholas. “The man is a genius, but he comes down to our level,” she says.

Among other awards, Nicholas has received the Ronald Reagan Award for Pioneering Achievement in Criminal Justice.

There's a chance that the allegations about the seamier side of Nicholas's life would have remained gossip behind the Orange Curtain, as some residents call Orange County, masked by his charitable work, his money, and his army of lawyers, had it not been for something about as far removed from sex and drugs as you can imagine: accounting.

Part of the ugly aftermath of the dot-com boom has been a massive government investigation into charges that many companies, such as Broadcom, accounted inaccurately for the stock options they doled out. Thus far, nearly 200 companies have disclosed that they engaged in so-called stock-options backdating, in which they granted options at a date in the past without telling shareholders they were doing so. Roughly two dozen executives have been charged with committing fraud. In a high-profile case, Greg Reyes, who was the C.E.O. of a technology company called Brocade Communications, was convicted of fraud last January and sentenced to 21 months in jail.

In some quarters, particularly in Silicon Valley, there is the attitude that the government is trying to criminalize accounting sloppiness, and that, anyway, entrepreneurs like Nicholas create such value that they should be given a pass. “It's like after the gold rush in America, trying to enforce trespassing laws,” says Ipsen. “Imagine what America could be like if Broadcom, Apple, and the other 250 companies now accused of backdating options didn't exist? Where would we be?”

There are others who argue, however, that there is a simple word for taking something from shareholders without telling them you're taking it: theft. And if it's theft, then by one measure, there is no company in America whose executives allegedly stole on as grand a scale as Broadcom did.

In June 2006, Broadcom announced that it had received an informal inquiry into its stock-option practices from the Securities and Exchange Commission. At the end of that year, the company announced the results of its internal investigation. It conceded that “certain executives and employees selected numerous grant dates after the fact.” Then, on January 23, 2007—four years after Nicholas's departure—Broadcom announced that it would take total charges of \$2.2 billion in order to account for the cost of the options. That is the largest charge taken by any U.S. company that has been caught up in the options scandal. Broadcom laid the blame on Bill Ruehle, who had resigned as C.F.O. that fall due to the stock-option review; former human-resources vice president Nancy Tullos; and Nicholas, who, the company said, “bears significant responsibility for the lack of adequate controls in the option granting process due to the tone and style of doing business he set.”

It's hard to see how what happened at Broadcom could be chalked up to mere sloppiness, argues the government. In 2000, for instance, the government says that Ruehle and Nicholas were informed by Broadcom's accountants that they might have to take a big stock-option-related charge. Ruehle told Nicholas, “Obviously, we are not about to let this happen.” And you can see why: if Broadcom had properly reflected the costs, according to the S.E.C. complaint, its 2000 operating income would have been reduced by \$442 million.

It's true that Nicholas himself was Broadcom's largest shareholder, so the practice hurt him too. But it's also true that he sold more than \$1 billion of his Broadcom stock during this period.

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Indeed, from early 2006 to early 2007, one employee wrote 129 checks on Nicholas's account, payable to cash, for a cumulative \$689,685.42. Only a few were for over \$10,000. Almost all were signed by Gunther. Many were cashed only minutes apart.

It was a sign of Nicholas's belief in his own invincibility or perhaps of his addiction that he apparently continued using drugs even after he knew he was under investigation. A video surreptitiously taken of him in Las Vegas on July 24, 2007, shows him looking disheveled in slacks and a button-down shirt open to mid-chest. He appears to be snorting cocaine at a desk in an ornate bedroom with carved-wood mirrors and a carved-wood headboard. At one point, a slender woman wearing a sports bra walks in. (Nicholas's lawyers have said that the video represents "one incident of recreational drug abuse.")

Prosecutors got wind of another suspicious incident that occurred in the fall of 2007. On November 24, Nicholas, driving his Lamborghini along Newport Coast Drive with his son in the car, crashed into a light pole with such force that he sheared it at the base. Nicholas left the scene, and his bodyguard—a former navy seal named Stephen "Otter" Otten, who had won a Bronze Star for his duty in Fallujah and Baghdad—told the police that he had been driving. He later expensed his ticket to Nicholas.

The truth might not have come out but for an anonymous tipster who, saying he had worked for Nicholas, called the police. Nicholas, he said, "was a very powerful man," and he feared retribution.

Today, when you drive through Broadcom's parking lot in the late morning, it's filled with employees' cars, and the cars are staid and serious. Revenues have more than tripled since Nicholas's departure, and the company now has over 4,000 patents—more than 15 times the number it had when Nicholas left. Under its new C.E.O., Scott McGregor, the company has made a big bet that it will be able to crack the cell-phone market, which could once again make Broadcom a hot, high-growth company, says analyst Cody Acree. But its success is far from assured, and at this point Nicholas's legacy is not helping. Nancy Tullos has pleaded guilty in the stock-option case and is cooperating with prosecutors. The company paid \$12 million to settle S.E.C. charges that it falsified its books, and has had to set up a special litigation committee to deal with all of the shareholder lawsuits coming its way.

Henry Samueli pleaded guilty to one count of lying to the S.E.C. He told the commission that he had no role in granting stock options, which was not true. He agreed to pay a \$12 million fine and struck a deal with prosecutors for five years of probation, but the judge overseeing his and Nicholas's case rejected the deal. "The \$12 million payment," wrote the judge, "suggests that Dr. Samueli's wealth and popularity will allow him to avoid the consequences of his alleged misconduct at Broadcom. The court cannot accept a plea agreement that gives the impression that justice is for sale." It is unclear what will happen next. Samueli has had to step down as Broadcom's chairman and take a leave from the board, has been indefinitely suspended from the National Hockey League as the owner of the Anaheim Ducks, and is facing the removal of his name from the U.C.L.A. and U.C. Irvine schools of engineering.

As for Nicholas, he is out of Cliffside Malibu and living in another Tuscan-style Newport Coast mansion, which he bought from Marie and Robert Gray, the founders of St. John Knits, for \$19.5 million. His travel is restricted to the central district of California. He has burned through lawyers but, in this case, he seems to have settled on his own Perry Mason: Brendan Sullivan, the Williams & Connolly lawyer who defended Lieutenant Colonel Oliver North in the Iran-contra case, among other high-profile clients. Sullivan claims that the questions presented to him for comment were "rife with inaccuracies" and that "Dr. Nicholas intends to defend himself in court, however, not in the pages of *Vanity Fair*." All signs say that Henry Nicholas will go to trial. If he's found guilty of all the charges, he could spend many years in jail.

You could argue that it was all necessary, that if Nicholas wasn't such an extremist he also wouldn't have built such a successful company. Or maybe not. Says one former executive, "Could he have done what he did without the insanity? I think he could have. He had a wife and kids and a wonderful company, and he let a piece of him take over."

A few years ago, Nicholas, in a moment of self-reflection, said, "All I've done is make money. I've achieved none of my goals." Now there's a chance he never will.

Maybe the cartoon characters Calvin and Hobbes sum it up best: "Do you believe in the Devil?" Calvin asks. "You know, a supreme evil being dedicated to the temptation, corruption, and destruction of man?"

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Marsy's law questions ripple through South Dakota

John Hult, jhult@argusleader.com

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(Photo: Argus Leader)

The changes keep coming.

Less than a month after South Dakota voters passed Amendment S, the victim's rights measure known as "Marsy's law," the state has closed off accident records and some local police departments have stopped offering the addresses of criminal incidents.

Counties have hired new employees as the state pays to upgrade its victim notification system, and defendants are spending more time in jail because their victims can't be found and notified.

The costs and policy shifts are all driven by caution.

Other states have victim's rights, but South Dakota is the first state in the country to implement them in this particular form (<https://dgbw5vw9bj6yg.cloudfront.net/wp-content/uploads/2016/03/sd-marsy-law.pdf>).

AG: Answers will come soon on Marsy's law

(<http://www.argusleader.com/story/news/2016/12/02/ag-answers-come-soon-marsys-law/94817546/>)

The measure's supporters say victims must opt-in before their newly-granted rights are protected, but many of the state's decision-makers haven't read it that way.

If victims have a constitutional right to privacy, they say, the government needs to protect it whether victims ask or not.

Attorney General Marty Jackley may clear up the question of opting in next week with an advisory opinion, but questions will bubble over for months or years to come.

South Dakota isn't the only state facing such questions. Two other states — North Dakota and Montana — saw voters back measures with nearly identical language in November, and officials in both states anticipate similar debates.

Here are just a few of the issues that have emerged since the passage of Marsy's law.

Why is all this happening?

Most of the immediate issues with Marsy's law stem from a provision meant to protect victims from the release of information or records that could be used to locate or harass the victim or victim's family.

The same section requires that notice be given to the victim any time anyone makes a request for that information.

In California, the government is prohibited from "confidential information (https://oag.ca.gov/victimservices/content/bill_of_rights)" that could be used for that purpose.

The other major issues stem from victim notification and justice system participation. The measure requires victims and family members to be notified of any court hearing, release from prison or jail or parole hearing.

The rights, formerly restricted to victims of violent felonies and domestic violence cases, now extend to every crime with a victim, and victims include commercial businesses that experience theft, vandalism or any other crime.

In California, most of Marsy's law's notification clauses include the phrase "upon request."

In South Dakota, those words appear once.

Does scanner traffic violate Marsy's law?

(<http://www.argusleader.com/story/news/2016/12/01/does-scanner-traffic-violate-marsys-law/94782310/>)

Why were accident records closed, and how could that affect me?

A good share of accidents involve some form of criminal activity.

Releasing accident records with a victim's address and phone number, would amount to the release of personal information, according Venhuizen.

If Venhuizen's interpretation holds, it will be harder for you to get an accident report for a very long time. Some police departments have continued to release the information, but others have taken the state's tack.

It will also be more difficult for insurance companies and for CarFax, whose vehicle history reports rely on crash information.

A lawyer for several insurance companies in South Dakota told the Marsy's law task force on Friday that he agrees with the notion that victims must "opt-in."

Larry Gamache, a spokesman for CarFax, said Friday it would be "premature" to comment on the impact to his company before Jackley issues an advisory.

How large are the SFPD's district beats?

(<http://www.argusleader.com/story/news/2016/11/30/how-large-sfpds-district-beats/94684428/>)

Could other public information disappear? What impact could it have on the court system?

Crime logs are closed off in Sioux Falls until Jackley issues an advisory on the privacy provision, as well.

If victims need to opt in to assert their privacy rights, however, that wouldn't clear up everything.

If a victim opts in, does that mean their names and addresses would need to be scrubbed from criminal complaints and public affidavits?

Victims testify in open court, under oath, using their names.

Marsy's law also gives victims the right to refuse and interview request. Many defense lawyers have wondered whether that conflicts with the U.S. Constitution's confrontation clause, which gives the accused the right to confront and question their accuser.

The right to be present at every hearing in a case could cause problems if asserted, as well.

During a meeting of Marsy's law opponents before the election, Minnehaha County Public Advocate Julie Hofer worried that extending such requirements to every hearing could clog the justice system with scheduling conflicts if many victims opt in.

"If they say 'that date doesn't work for me,' what do you do?" Hofer said. "It's going to hold the court hostage."

Without the opt-in clarification, defendants are staying in jail longer as prosecutors scramble to locate them and notify them of bond hearings.

Questions about how the courts will handle the release or redaction of information and how to handle the law's provisions for notification and victim participation are swirling in every judicial circuit, said 2nd Judicial Circuit Administrator Karl Thoennes.

"We've spent a lot of time on it on multiple levels trying to work this out," said Thoennes.

How are other states dealing with this?

They aren't yet, but they're asking the same questions.

A version of Marsy's law similar to the South Dakota-backed measure will go into effect on Thursday in North Dakota.

Some in that state have already raised concerns about the release of police reports, victim names and addresses – information currently released under that state's open records law.

"Our open records law is now in conflict with what the constitution has," Fargo Police Department Deputy Chief Joe Anderson said.

Montana officials are in a dispute over the effective date of Marsy's law, with the state Department of Justice arguing for immediate implementation and the state canvassing board saying the date should be July 1 of next year.

When it does take effect, however, Helena city attorney Thomas Jodoin doesn't see any way around closing off accident and crime records.

"I won't be able to give police reports or accident reports to people who are entitled to them right now under Montana state law," Jodoin said.

Jodoin worries that he won't even be able to offer victim names to local domestic violence services unless officers on the scene walk traumatized victims through the process of waiving their privacy rights.

"We would not be able to give (shelters) the victim's name," Jodoin said.

Why didn't this happen in Illinois and California?

Backers of the Marsy's law consistently pointed to California and Illinois as examples of states where Marsy's law didn't cause major trouble.

Part of that has to do with variations in language.

California uses the word "confidential" in its privacy provision, and Illinois doesn't have a similar privacy clause. Instead, it says the state must protect victims' (<http://www.ilga.gov/commission/lrb/con1.htm>) "dignity and privacy," and that victims should be free from "harassment, intimidation and abuse."

In California, the words "upon request" appear seven times throughout the language of the crime victim's bill of right. Notification of court proceedings are "upon request." The right to be heard in court appears "upon request."

The words "upon request" language appears just once in South Dakota's version, designed as a blanket "opt-in" provision.

There are also worries about liability. Illinois has language saying violations of victim's rights do not create a "cause of action" against state or local governments, courts or any officer or employee of the same.

That means victims can't sue Illinois for violating their rights. The Illinois' version also says victim's rights violations can't be used to vacate a conviction or create a ground for relief.

South Dakota's version doesn't have any of that, prompting concern of lawsuits against government officials.

Jason Glodt, the measure's sponsor, maintained both before and after the measure's passage that no cause of action exists as a result of Marsy's law.

"It would have to be in there to create a cause of action," Glodt said.

The remedies defined in the statute, he said, are restricted to allowing the victim or their family to stop a violation of rights or to redo hearings that took place without their input.

Could anything be done to change Marsy's law?

The legislature can't overturn or re-write the measure, as lawmakers have promised to do with the voter-backed ethics law Initiated Measure 22.

The South Dakota Supreme Court could rule parts of the amendment unconstitutional through a court challenge.

If Jackley's office finalizes an opinion advising victims to "opt-in," some changes to procedure could be necessary.

Accident reports could include an advisory message to those involved asking them to assert their rights, for example, or the Marsy's law cards now issued to victims could include specific language explaining that the rights must be asserted before they're protected.

Glodt doesn't agree with the strict interpretations of Marsy's law, the restriction of police logs or accident information, but he also said he's glad Jackley convened a task force to answer those questions.

"We understand why law enforcement would take a very cautious approach," Glodt said.

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Nevada Attorneys for Criminal Justice

TO: Assembly Committee on Legislative Operations and Elections

FROM: Nevada Attorneys for Criminal Justice (NACJ)

DATE: May 8, 2017

RE: SJR17—Hearing May 9, 2017

Opposition to SJR17

NACJ Opposes SJR17

Basis for Opposition

One important purpose of the criminal justice system is to protect the rights of victims. NACJ supports this purpose, and supports Nevada's existing victims' rights statutes. However, the criminal justice system has other, countervailing purposes. Trials must be fair to both the State and the defense, and must be as efficient and low-cost as possible given the other goals. Marsy's Law does little, if anything, to strengthen victims' rights. By contrast, it does much to impair the efficiency of the courts and undermine the constitutional rights of defendants (and the State).

NACJ already wrote a letter to the Senate Judiciary Committee (on February 22, available on NELIS) laying out several concerns with unconstitutional aspects of Marsy's Law. Unfortunately, this letter did not exhaust the problems with the proposed amendment.

To begin, Marsy's Law has the potential to be extremely expensive. One reason this is true is that it requires extensive

procedural rights for any victim of a crime, no matter how minimal the actual impact on them. (Consider an inebriated concertgoer getting up on stage and mooning an audience – that could be thousands of potential victims, each of whom a police officer would have to contact, who would be entitled to show up in court, and so on.)

Another problem that has happened in other states is the intervention of third parties into the criminal justice process. In California, an entire industry of boutique law firms sprang up after their passage of Marsy's Law, with civil litigators aggressively seeking discovery and attempting to intervene in criminal matters. This has been quite a burden on the resources of courts, to say nothing of prosecutors and defense attorneys. In North Dakota, there has been an upswing in divorce lawyers attempting to intervene in criminal cases for the purpose of obtaining leverage in messy, emotionally fraught family law cases. Again – more burden on everyone, without any real benefit for victims.

Finally, there are still more problems that Marsy's Law is likely to cause in the administration of trials. Consider the requirement that a victim be allowed to be present and heard for all public hearings. Does this apply when the victim is a witness, and wishes to sit in court and hear the testimony of another witness? In most circumstances we would call that a very serious problem (witnesses usually testify separately in order to avoid inadvertent tainting of testimony). But under North Dakota's implementation of Marsy's Law, it is already happening.

The impulse behind Marsy's Law is a positive one, and NACJ would support strengthening the existing statutes in a reasonable manner. But Marsy's Law is not reasonable, and so NACJ opposes it.

Jim Hoffman

Jim Hoffman
NACJ Legislative Committee

May 8, 2017

Chairwoman Olivia Diaz
Committee on Legislative Operations and Elections Nevada State Assembly
Legislative Building
Carson City, NV 89701
RE: SJR 17- SUPPORT

Chairwoman Diaz and Members of the Committee:

My name is Kristy Oriol. I am the Policy Coordinator at the Nevada Coalition to End Domestic and Sexual Violence (NCEDSV), the statewide coalition of domestic and sexual violence programs in Nevada. NCEDSV is in support of SJR 17, which would provide much needed constitutional protections for victims of crime.

Navigating the legal system and determining rights is, to say the least, an overwhelming process for victims. At worst, it is terrifying and can lead to repeated re-victimization. After a traumatic event such as being abused or sexually assaulted by an intimate partner, the last thing a victim often thinks of is her or his constitutional rights. If a victim does decide to engage the legal system, the process can be incredibly confusing. Victim advocates in Nevada provide a necessary support for victims in navigating the legal system, however many victims do not ever make it that point due to fear of reporting and a lack of clarity of the legal process.

Victims that do report abuse commonly either do not want the crime prosecuted or change their minds about prosecuting. This decision is typically the result of fear of the abuser and his or her family, financial dependence on an abuser and concerns they will not be believed and supported by the justice system. Victims can be frustrated to find out that prosecution can move forward without their consent. Expanding a victims constitutional rights ensures they are able to partly take back some control which has been stolen from them.

In addition to the benefit SJR 17 offers to direct victims, it also guarantees the constitutional rights for victim families. Nevada has the fourth highest rate among U.S. states for women being killed by men, according to the latest Violence Policy Center report¹. Nevada ranked in the top 10 nine of the last 10 years for the rate of women being killed by men, and has repeatedly ranked first. Losing a daughter, mother or sister at the hands of an intimate partner is a devastating reality that many Nevada families face each year. SJR 17 would allow these family members to stay involved with the prosecution of the defendant and know their rights.

We are grateful to Senator Roberson and the supporters of SJR 17. Nevada victims and their families deserve the right to know what is afforded to them. During times of crisis, it is almost impossible for victims to retain everything that is told to them by law enforcement, advocates, family and attorneys. SJR 17 puts all of this information in a single location for the victim to review when he or she is ready. We strongly urge your support.

Kristy Oriol

¹ <https://www.unce.unr.edu/publications/files/cy/2011/fs1176.pdf>

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Ninth Session
May 18, 2017**

The Committee on Legislative Operations and Elections was called to order by Chairwoman Olivia Diaz at 2:33 p.m. on Thursday, May 18, 2017, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Olivia Diaz, Chairwoman
Assemblyman Elliot T. Anderson
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Skip Daly
Assemblyman Ira Hansen
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman James Ohrenschall
Assemblyman James Oscarson

COMMITTEE MEMBERS ABSENT:

Assemblyman Nelson Araujo, Vice Chair (excused)
Assemblyman John Hambrick (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Carol Stonefield, Committee Policy Analyst
Kevin Powers, Committee Counsel
Julianne King, Committee Secretary
Melissa Loomis, Committee Assistant

Minutes ID: 1173



[Three bills, Senate Bill 144, Senate Bill 492, and Senate Joint Resolution 17 of the 78th Session, were agendaized but not heard.]

Senate Bill 144 (1st Reprint): Revises provisions relating to elections. (BDR 24-300)

Senate Bill 492 (1st Reprint): Revises provisions relating to polling places. (BDR 24-450)

Senate Joint Resolution 17 of the 78th Session: Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Are there any questions from the Committee? Seeing none, we are adjourned [at 3:03 p.m.].

RESPECTFULLY SUBMITTED:

Julianne King
Committee Secretary

APPROVED BY:

Assemblywoman Olivia Diaz, Chairwoman

DATE: _____

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Ninth Session
May 19, 2017**

The Committee on Legislative Operations and Elections was called to order by Chairwoman Olivia Diaz at 3:23 p.m. on Friday, May 19, 2017, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Olivia Diaz, Chairwoman
Assemblyman Nelson Araujo, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Skip Daly
Assemblyman John Hambrick
Assemblyman Ira Hansen
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman James Ohrenschall
Assemblyman James Oscarson

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Carol Stonefield, Committee Policy Analyst
Kevin Powers, Committee Counsel
Julianne King, Committee Secretary
Melissa Loomis, Committee Assistant

Minutes ID: 1210



neighborhood on Election Day can often present a challenge if someone is getting off work at 5 p.m., trying to pick up their kids, and trying to get to the polling place before polls close. I will be supporting the measure.

Assemblyman Elliot T. Anderson:

I also wanted to go on record and say that I like this bill. From what I understand, some of the cities already do this sort of thing for municipal elections because it is a money-saver, and it makes voting more convenient. I do not see why we do not allow more authority for this during the general election. I think the technology is there to make this more feasible than it might have been in the past. Why not make it simpler? With that, I will be strongly supporting it.

Chairwoman Diaz:

I will entertain a motion to do pass S.B. 492 (R1).

ASSEMBLYMAN ELLIOT T. ANDERSON MOVED TO DO PASS
SENATE BILL 492 (1ST REPRINT).

ASSEMBLYWOMAN BILBRAY-AXELROD SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HAMBRICK, HANSEN,
McARTHUR, AND OSCARSON VOTED NO.)

I will assign the floor statement to Assemblyman Ohrenschall. We will move on to Senate Joint Resolution 17 of the 78th Session.

Senate Joint Resolution 17 of the 78th Session: Proposes to amend the *Nevada Constitution* to expand the rights guaranteed to victims of crime. (BDR C-952)

Carol Stonefield, Committee Policy Analyst:

The last measure before the Committee is Senate Joint Resolution 17 of the 78th Session. It was heard in this Committee on May 9, 2017, and was presented by Senator Roberson (Exhibit G). This resolution proposes to amend the *Nevada Constitution* by eliminating existing victims' rights provisions found in Article 1, Section 8, and replacing them with an expanded set of provisions in the form of a victims' bill of rights. This proposal would be required to be passed in an identical form in order to appear on the 2018 General Election ballot.

A conceptual amendment has been proposed that would revise the content of the resolution as well as the process the Legislature would follow in approving the resolution. During the hearing, there was opposition to this measure.

Chairwoman Diaz:

Is there any discussion on S.J.R. 17 of the 78th Session?

Assemblyman Hambrick:

I like the concept. However, I am concerned that should we pass the amendment, the clock will go back another two years. It starts the process all over again. The clock started last session. With my background, I truly understand why we need this, but I hate to see it pushed back another two years. I would rather have this body make the decision now. Let us get on with it. If there is something to be learned in the interim, perhaps it can readdress this issue. I would strongly urge the members to reject this particular motion. We need to get going and let the system work, not delay it for another two years.

Chairwoman Diaz:

I am on the opposite side. I think that amending the *Nevada Constitution* is a big step. Our constituency has bestowed a big responsibility upon us as elected legislators. They are the ones who want us to represent them in these positions; they want us to make wise decisions. I understand your sense of urgency, but at the same time, I have taken a deep dive into this area. I am not taking this decision lightly. I looked at Nevada's state statutes in comparison to Marsy's Law and, per state statutes, Nevada has covered almost every single subject that we are looking to enshrine by adopting Marsy's Law. We cannot just say that we can get it out right now, put it to the vote of the people, and then come back and try to fix it. The process does not work that way.

Once we send it to the ballot, we have to adopt it as we are sending it on to the ballot. My hesitancy in sending it in its current iteration is that there is some lack of balance. There is some lack of clarity, and we do not want to have unforeseen or unintended consequences that Nevada would have to bear the brunt of as a result of adopting it as is. I have done my research, and many states have faced problems when they were adopting it as well. I would not want to put Nevada in harm's way.

Assemblyman Araujo:

I supported the original version of S.J.R. 17 of the 78th Session. While I agree with Assemblyman Hambrick, if it is the will of the majority of the Committee, then I am prepared to also support the amended version. I just wanted to make sure that folks knew that I see the urgency as well. I think it is something that we need to get done. If we amend it this time, let us hope we get it through and passed five years from now.

Assemblyman Elliot T. Anderson:

I am in a weird spot out of all the Committee members because I am the one person who voted no in the entire Assembly last session. I voted no because of my hesitancy to put things in the *Nevada Constitution* in general. The Committee is aware of how carefully I think we have to look at what happens with the *Nevada Constitution*. This amendment makes me comfortable enough. What was going through my head was what happens if this gums up the criminal justice system? There have been some issues in other states. Because of this amendment, I think it will ensure that our criminal justice system runs smoothly. It already has a lot going on. I will be switching my vote this session to yes.

Assemblyman Oscarson:

I supported this originally and continue to support it. I would only hope that we can continue the discussion. I will vote to get it out of Committee. I think there is another discussion that needs to happen. We need to continue that discussion for the rights of victims. I appreciate the conversations we had here and look forward to the continued discussion and, hopefully, implementation.

Assemblyman McArthur:

I have concerns, but I am going to vote yes to get it out of Committee. I will reserve my right to change on the floor.

Assemblyman Hambrick:

I will join my colleagues and vote yes in Committee, but I will reserve my right to change. I will hopefully do a better sales pitch on the floor.

Assemblywoman Bilbray-Axelrod:

I may be the lone no vote on this. I appreciate everyone's concerns. I went back and watched the hearings from two years ago and compared how the bill started and where it ended. This has not been an easy choice for me, but I will be a no vote.

Assemblywoman Monroe-Moreno:

Coming from a law enforcement background and being a victim of crime myself, I cannot tell you how much I appreciate this victims' rights bill. I was not here during the last legislative session to cast a vote on how it was originally written. However, I want this to move forward. I like the amendment. I think it answers the questions I had in the original hearing. I will be voting yes.

Chairwoman Diaz:

I want to reiterate that victims' rights are super important. If I felt there was a sense of urgency that Nevada was not complying with what is currently drafted in Marsy's Law, I would see the need to push it out in an expedient time, so people would be protected. However, they are currently protected under Nevada's statutes. They will continue to be protected; they are not under attack. If anything, we can continue to bolster them through statute. With that, I will entertain a motion to amend and do pass Senate Joint Resolution 17 of the 78th Session.

Assemblyman Daly:

I move to amend and do pass Senate Joint Resolution 17 of the 78th Session by substituting the language in S.J.R. 17 of the 78th Session into a new assembly joint resolution of an undetermined number by adding the language in green in subsection 7 into the body of the previous language from S.J.R. 17 of the 78th Session.

ASSEMBLYMAN DALY MADE A MOTION TO AMEND AND DO PASS
SENATE JOINT RESOLUTION 17 OF THE 78TH SESSION.

ASSEMBLYWOMAN MONROE-MORENO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BILBRAY-AXELROD
VOTED NO.)

I will assign the floor statement to Assemblywoman Monroe-Moreno. With that, we are adjourned [at 3:48 p.m.].

RESPECTFULLY SUBMITTED:

Julianne King
Committee Secretary

APPROVED BY:

Assemblywoman Olivia Diaz, Chairwoman

DATE: _____

Assembly Committee on Legislative Operations and Elections

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

SENATE JOINT RESOLUTION NO. 17 OF THE 78TH SESSION

Proposes to amend the *Nevada Constitution* to expand the rights guaranteed to victims of crime. (BDR C-952)

Sponsored by: Senators Roberson, Harris, Farley, et al.

Date Heard: May 9, 2017

Fiscal Impact: Effect on Local Government: No.

Effect on the State: No.

Senate Joint Resolution No. 17 of the 78th Legislative Session proposes to amend the *Nevada Constitution* by eliminating existing victims' rights provisions found in Article 1, Section 8, and replacing them with an expanded set of provisions in the form of a victims' bill of rights.

If approved in identical form during the 2017 Legislative Session, the proposal will be submitted to the voters for final approval or disapproval at the 2018 General Election.

Amendments: A conceptual amendment has been proposed that would revise the content of the resolution as well as the process that the Legislature would follow in approving the resolution.

Special Note: The proposed new section of the *Nevada Constitution* is modeled after the victims' bill of rights set forth in the *California Constitution* as it was amended in 2008 by what is commonly referred to as Marsy's Law (Cal. Const. Art. 1, § 28).

PROPOSED CONCEPTUAL AMENDMENT TO SENATE JOINT RESOLUTION NO. 17 OF THE 78TH SESSION

PREPARED FOR ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS
MAY 19, 2017

PREPARED BY THE LEGAL DIVISION

**NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM.
THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.**

Legal background: In order for S.J.R. 17 of the 78th Session (2015) to appear on the 2018 general election ballot, the current Legislature must pass the joint resolution in its precise form without amendments. Nev. Const. art. 16, § 1; Selzer v. Synhorst, 113 N.W.2d 724, 733 (Iowa 1962) (“A constitutional amendment so initiated by the legislature must be passed in the same form by two successive sessions of the legislature and then approved by a vote of the people.”); State ex rel. Owen v. Donald, 151 N.W. 331, 342 (Wis. 1915) (“At the next session of the legislature each of the two houses must agree to the precise proposal agreed to at the previous session.”).

However, the current Legislature may elect to amend S.J.R. 17 of the 78th Session (2015) by substituting in its place a substitute joint resolution. See Coleman v. Pross, 246 S.E.2d 613, 620 (Va. 1978) (approving such legislative action under analogous constitutional amendment process in Virginia Constitution). If the current Legislature elects to do so, its legislative amendment would start anew the process for amending the Nevada Constitution. Coleman, 246 S.E.2d at 620 (“When revisions in proposed constitutional amendments have been made in Virginia by the second General Assembly, the amended proposal has been referred for approval to the next regular session after the next general election of members of the House of Delegates before submission to the voters.”).

Therefore, because S.J.R. 17 of the 78th Session (2015) is before the Assembly Standing Committee on Legislative Operations and Elections, the Committee has the authority to propose and recommend an amendment that, if adopted by the Assembly, would amend S.J.R. 17 of the 78th Session (2015) by substituting in its place a substitute Assembly Joint Resolution. If the Assembly were to adopt the amendment and pass the substitute joint resolution in the manner required by the Nevada Constitution, it would be transmitted to the Senate for its consideration for the first time. If the Senate were to pass the substitute joint resolution in the form passed by the Assembly and in the manner required by the Nevada Constitution, or if the Assembly were to concur in any additional amendments adopted by the Senate, the substitute joint resolution would be returned to the next Legislature for its consideration. Nev. Const. art. 16, § 1; NRS 218D.800. If the next Legislature were to pass the substitute joint resolution, in its precise form without amendments, it would appear on the 2020 general election ballot. Id.

PROPOSED CONCEPTUAL AMENDMENT TO SJR17
OF THE 78TH SESSION

Proposed conceptual amendment:

1. Amend S.J.R. 17 of the 78th Session (2015) by substituting in its place a substitute Assembly Joint Resolution to be designated A.J.R. 15 of the 79th Session (2017) or, if necessary, to be designated by the next sequential number available for Assembly Joint Resolutions of the 79th Session (2017).

2. The substitute Assembly Joint Resolution would consist of the provisions of S.J.R. 17 of the 78th Session (2015), except that the substitute Assembly Joint Resolution would be amended, in its first resolved clause setting forth the proposed Section 23 of Article 1 of the Nevada Constitution, by adding thereto a new **subsection 7** to read as follows:

6. The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.

7. In interpreting and applying the provisions of this section, a court may balance the rights of the victim set forth in this section against the needs of society for effective, efficient and orderly judicial administration of the criminal or juvenile justice process.

8. As used in this section, "victim" means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.

THE ONE HUNDRED AND TENTH DAY

CARSON CITY (Friday), May 26, 2017

Assembly called to order at 8:37 p.m.

Mr. Speaker presiding.

Roll called.

All present except Assemblyman Hansen, who was excused.

Prayer by the Chaplain, Reverend Richard Snyder.

Loving God, Your work in the world is done by many people in many ways using the many gifts and talents You give. Bless all the members of this Assembly and all who work for this House. Guide them by Your Spirit as they deal with the issues facing this state.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

Assembly Daily Journal

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Government Affairs, to which were referred Senate Bills Nos. 25, 501, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

EDGAR FLORES, *Chair*

Mr. Speaker:

Your Committee on Judiciary, to which was referred Senate Bill No. 259, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

STEVE YEAGER, *Chair*

Mr. Speaker:

Your Committee on Legislative Operations and Elections, to which was referred Assembly Bill No. 296, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Legislative Operations and Elections, to which was referred Senate Joint Resolution No. 17 of the 78th Session, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

OLIVIA DIAZ, *Chair*

Mr. Speaker:

Your Committee on Natural Resources, Agriculture, and Mining, to which were referred Senate Bills Nos. 512, 514, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

HEIDI SWANK, *Chair*

(3) Person acquiring a security interest in the vehicle, and his or her successors in interest,

↪ against any expense, loss or damage because of the issuance of the salvage title or because of any defect in or undisclosed security interest in the applicant's right or title to the vehicle or the applicant's interest in the vehicle.

6. A right of action does not exist in favor of any person by reason of any action or failure to act on the part of the ~~[Department]~~ state agency or any officer or employee thereof in carrying out the provisions of subsections 3, 4 and 5, or in giving or failing to give any information concerning the legal ownership of a vehicle or the existence of a salvage title obtained pursuant to subsection 3.

Sec. 7. This act becomes effective:

1. Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

2. On July 1, 2018, for all other purposes.

Assemblyman Carrillo moved the adoption of the amendment.

Remarks by Assemblyman Carrillo.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Joint Resolution No. 17 of the 78th Session.

Resolution read third time.

The following amendment was proposed by the Committee on Legislative Operations and Elections:

Amendment No. 894.

SENATE JOINT RESOLUTION NO. 17 OF THE 78TH SESSION, AS AMENDED BY THE 79TH SESSION—SENATORS ROBERSON, HARRIS, FARLEY; HARDY AND SETTELMAYER

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

Under the Nevada Constitution, the Legislature is required to provide by law for certain rights of the victims of crimes, in particular, the right to be informed of the status of criminal proceedings concerning those crimes, the right to be present at public hearings concerning those crimes and the right to be heard at all proceedings for the sentencing or release of persons convicted of those crimes. (Nev. Const. Art. 1, § 8)

This resolution proposes to amend the Nevada Constitution to eliminate the existing provisions of Article 1, Section 8, concerning victims' rights and to add a new section that sets forth an expanded list of such rights in the form of a victims' bill of rights. The new section is modeled after the victims' bill

of rights set forth in the California Constitution as it was amended in 2008 by what is commonly referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

Under the Nevada Constitution, in order for the Legislature to submit a resolution proposing state constitutional amendments to the voters for approval and ratification: (1) the Legislature must pass the resolution for a first time; and (2) the next Legislature also must pass the same resolution, without any legislative amendments, for a second time. (Nev. Const. Art. 16, § 1; *Selzer v. Synhorst*, 113 N.W.2d 724, 733 (Iowa 1962) (“A constitutional amendment so initiated by the legislature must be passed in the same form by two successive sessions of the legislature and then approved by a vote of the people.”); *State ex rel. Owen v. Donald*, 151 N.W. 331, 342 (Wis. 1915) (“At the next session of the legislature each of the two houses must agree to the precise proposal agreed to at the previous session.”)) If the next Legislature amends the resolution and passes it as amended, the legislative amendments start anew the process of amending the Nevada Constitution. (*Coleman v. Pross*, 246 S.E.2d 613, 620 (Va. 1978))

This resolution was initially passed by the 2015 Legislature during the 78th Session and returned for consideration by the 2017 Legislature during the 79th Session to determine whether to pass the same resolution, without any legislative amendments, for a second time. (Nev. Const. Art. 16, § 1; NRS 218D.800) However, the 2017 Legislature amended this resolution. Therefore, if the 2017 Legislature passes this resolution as amended, it also must be passed by the next Legislature and then approved and ratified by the voters in an election before the proposed amendments to the Nevada Constitution become effective.

Resolved by the Senate and Assembly of the State of Nevada, Jointly, That a new section, designated Section 23, be added to Article 1 of the Nevada Constitution to read as follows:

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family.

(e) To refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(f) To reasonably confer with the prosecuting agency, upon request, regarding the case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing, and at any parole proceeding.

(i) To the timely disposition of the case following the arrest of the defendant.

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(l) To full and timely restitution.

(m) To the prompt return of legal property when no longer needed as evidence.

(n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(o) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

(p) To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim.

(q) To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.

2. A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case. The court shall promptly rule on a victim's request. A defendant does not have standing to assert the rights of his or her victim. This section does not alter the powers, duties or responsibilities of a prosecuting attorney. A victim does not have the status of a party in a criminal proceeding.

3. *Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction.*

4. *A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.*

5. *The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.*

6. *The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.*

7. *In interpreting and applying the provisions of this section, a court may balance the rights of the victim set forth in this section against the needs of society for effective, efficient and orderly judicial administration of the criminal or juvenile justice process.*

8. *As used in this section, "victim" means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.*

And be it further

Resolved, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

— 179 —

2. ~~[The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~—3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~—4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~—5.]~~ No person shall be deprived of life, liberty, or property, without due process of law.

~~[6.]~~ 3. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

Assemblywoman Diaz moved the adoption of the amendment.

Remarks by Assemblywoman Diaz.

Amendment adopted.

Resolution ordered reprinted, engrossed and to third reading.

Assembly Bill No. 52.

Bill read third time.

Remarks by Assemblywoman Cohen.

ASSEMBLYWOMAN COHEN:

Assembly Bill 52 adds a new chapter to the *Nevada Revised Statutes* governing the review and permitting of dissolved mineral resource exploration projects as defined in the bill. The measure includes provisions on limits on water use, penalties, and the adoption of regulations by the Commission on Mineral Resources in coordination with the Division of Water Resources and the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

Roll call on Assembly Bill No. 52:

YEAS—34.

NAYS—Ellison, Kramer, Krasner, Marchant, Pickard, Tolles, Wheeler—7.

EXCUSED—Hansen.

(Reprinted with amendments adopted on May 26, 2017)

FIRST REPRINT

S.J.R. 17 of the 78th Session,
as Amended by the 79th Session

SENATE JOINT RESOLUTION NO. 17 OF THE 78TH SESSION, AS
AMENDED BY THE 79TH SESSION—SENATORS ROBERSON,
HARRIS, FARLEY; HARDY AND SETTELMAYER

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Proposes to amend the Nevada Constitution to
expand the rights guaranteed to victims of crime.
(BDR C-952)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada
Constitution to expand the rights guaranteed to victims of
crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

1 Under the Nevada Constitution, the Legislature is required to provide by law
2 for certain rights of the victims of crimes, in particular, the right to be informed of
3 the status of criminal proceedings concerning those crimes, the right to be present
4 at public hearings concerning those crimes and the right to be heard at all
5 proceedings for the sentencing or release of persons convicted of those crimes.
6 (Nev. Const. Art. 1, § 8)

7 This resolution proposes to amend the Nevada Constitution to eliminate the
8 existing provisions of Article 1, Section 8, concerning victims' rights and to add a
9 new section that sets forth an expanded list of such rights in the form of a victims'
10 bill of rights. The new section is modeled after the victims' bill of rights set forth in
11 the California Constitution as it was amended in 2008 by what is commonly
12 referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

13 Under the Nevada Constitution, in order for the Legislature to submit a
14 resolution proposing state constitutional amendments to the voters for approval and
15 ratification: (1) the Legislature must pass the resolution for a first time; and (2) the
16 next Legislature also must pass the same resolution, without any legislative
17 amendments, for a second time. (Nev. Const. Art. 16, § 1; *Selzer v. Synhorst*, 113
18 N.W.2d 724, 733 (Iowa 1962) ("A constitutional amendment so initiated by the
19 legislature must be passed in the same form by two successive sessions of the
20 legislature and then approved by a vote of the people."); *State ex rel. Owen v.*



* S J R 1 7 7 8 R 1 *

21 *Donald*, 151 N.W. 331, 342 (Wis. 1915) (“At the next session of the legislature
22 each of the two houses must agree to the precise proposal agreed to at the previous
23 session.”)) If the next Legislature amends the resolution and passes it as amended,
24 the legislative amendments start anew the process of amending the Nevada
25 Constitution. (*Coleman v. Pross*, 246 S.E.2d 613, 620 (Va. 1978))

26 This resolution was initially passed by the 2015 Legislature during the 78th
27 Session and returned for consideration by the 2017 Legislature during the 79th
28 Session to determine whether to pass the same resolution, without any legislative
29 amendments, for a second time. (Nev. Const. Art. 16, § 1; NRS 218D.800)
30 However, the 2017 Legislature amended this resolution. Therefore, if the 2017
31 Legislature passes this resolution as amended, it also must be passed by the next
32 Legislature and then approved and ratified by the voters in an election before the
33 proposed amendments to the Nevada Constitution become effective.

1 RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF
2 NEVADA, JOINTLY, That a new section, designated Section 23, be
3 added to Article 1 of the Nevada Constitution to read as follows:

4 *Sec. 23. 1. Each person who is the victim of a crime*
5 *is entitled to the following rights:*

6 *(a) To be treated with fairness and respect for his or her*
7 *privacy and dignity, and to be free from intimidation,*
8 *harassment and abuse, throughout the criminal or juvenile*
9 *justice process.*

10 *(b) To be reasonably protected from the defendant and*
11 *persons acting on behalf of the defendant.*

12 *(c) To have the safety of the victim and the victim’s*
13 *family considered as a factor in fixing the amount of bail*
14 *and release conditions for the defendant.*

15 *(d) To prevent the disclosure of confidential information*
16 *or records to the defendant which could be used to locate or*
17 *harass the victim or the victim’s family.*

18 *(e) To refuse an interview or deposition request, unless*
19 *under court order, and to set reasonable conditions on the*
20 *conduct of any such interview to which the victim consents.*

21 *(f) To reasonably confer with the prosecuting agency,*
22 *upon request, regarding the case.*

23 *(g) To reasonable notice of all public proceedings,*
24 *including delinquency proceedings, upon request, at which*
25 *the defendant and the prosecutor are entitled to be present*
26 *and of all parole or other postconviction release*
27 *proceedings, and to be present at all such proceedings.*

28 *(h) To be reasonably heard, upon request, at any public*
29 *proceeding, including any delinquency proceeding, in any*
30 *court involving release or sentencing, and at any parole*
31 *proceeding.*



1 (i) To the timely disposition of the case following the
2 arrest of the defendant.

3 (j) To provide information to any public officer or
4 employee conducting a presentence investigation
5 concerning the impact of the offense on the victim and the
6 victim's family and any sentencing recommendations before
7 the sentencing of the defendant.

8 (k) To be informed, upon request, of the conviction,
9 sentence, place and time of incarceration, or other
10 disposition of the defendant, the scheduled release date of
11 the defendant and the release of or the escape by the
12 defendant from custody.

13 (l) To full and timely restitution.

14 (m) To the prompt return of legal property when no
15 longer needed as evidence.

16 (n) To be informed of all postconviction proceedings, to
17 participate and provide information to the parole authority
18 to be considered before the parole of the offender and to be
19 notified, upon request, of the parole or other release of the
20 offender.

21 (o) To have the safety of the victim, the victim's family
22 and the general public considered before any parole or
23 other postjudgment release decision is made.

24 (p) To have all monetary payments, money and property
25 collected from any person who has been ordered to make
26 restitution be first applied to pay the amounts ordered as
27 restitution to the victim.

28 (q) To be specifically informed of the rights enumerated
29 in this section, and to have information concerning those
30 rights be made available to the general public.

31 2. A victim has standing to assert the rights
32 enumerated in this section in any court with jurisdiction
33 over the case. The court shall promptly rule on a victim's
34 request. A defendant does not have standing to assert the
35 rights of his or her victim. This section does not alter the
36 powers, duties or responsibilities of a prosecuting attorney.
37 A victim does not have the status of a party in a criminal
38 proceeding.

39 3. Except as otherwise provided in subsection 4, no
40 person may maintain an action against this State or any
41 public officer or employee for damages or injunctive,
42 declaratory or other legal or equitable relief on behalf of a
43 victim of a crime as a result of a violation of this section or
44 any statute enacted by the Legislature pursuant thereto. No
45 such violation authorizes setting aside a conviction.



* S J R 1 7 7 8 R 1 *

1 4. *A person may maintain an action to compel a public*
2 *officer or employee to carry out any duty required by this*
3 *section or any statute enacted by the Legislature pursuant*
4 *thereto.*

5 5. *The granting of these rights to victims must not be*
6 *construed to deny or disparage other rights possessed by*
7 *victims. A parole authority shall extend the right to be heard*
8 *at a parole hearing to any person harmed by the offender.*

9 6. *The Legislature shall by law provide any other*
10 *measure necessary or useful to secure to victims of crime*
11 *the benefit of the rights set forth in this section.*

12 7. *In interpreting and applying the provisions of this*
13 *section, a court may balance the rights of the victim set*
14 *forth in this section against the needs of society for*
15 *effective, efficient and orderly judicial administration of the*
16 *criminal or juvenile justice process.*

17 8. *As used in this section, "victim" means any person*
18 *directly and proximately harmed by the commission of a*
19 *criminal offense under any law of this State. If the victim is*
20 *less than 18 years of age, incompetent, incapacitated or*
21 *deceased, the term includes the legal guardian of the victim*
22 *or a representative of the victim's estate, member of the*
23 *victim's family or any other person who is appointed by the*
24 *court to act on the victim's behalf, except that the court*
25 *shall not appoint the defendant as such a person.*

26 And be it further

27 RESOLVED, That Section 8 of Article 1 of the Nevada
28 Constitution be amended to read as follows:

29 Sec. 8. 1. No person shall be tried for a capital or
30 other infamous crime (except in cases of impeachment, and in
31 cases of the militia when in actual service and the land and
32 naval forces in time of war, or which this State may keep,
33 with the consent of Congress, in time of peace, and in cases
34 of petit larceny, under the regulation of the Legislature)
35 except on presentment or indictment of the grand jury, or
36 upon information duly filed by a district attorney, or Attorney
37 General of the State, and in any trial, in any court whatever,
38 the party accused shall be allowed to appear and defend in
39 person, and with counsel, as in civil actions. No person shall
40 be subject to be twice put in jeopardy for the same offense;
41 nor shall he be compelled, in any criminal case, to be a
42 witness against himself.

43 2. ~~{The Legislature shall provide by law for the rights of~~
44 ~~victims of crime, personally or through a representative, to~~
45 ~~be:~~



* S J R 1 7 7 8 R 1 *

1 ~~—(a) Informed, upon written request, of the status or~~
2 ~~disposition of a criminal proceeding at any stage of the~~
3 ~~proceeding;~~

4 ~~—(b) Present at all public hearings involving the critical~~
5 ~~stages of a criminal proceeding; and~~

6 ~~—(c) Heard at all proceedings for the sentencing or release~~
7 ~~of a convicted person after trial.~~

8 ~~—3. Except as otherwise provided in subsection 4, no~~
9 ~~person may maintain an action against the State or any public~~
10 ~~officer or employee for damages or injunctive, declaratory or~~
11 ~~other legal or equitable relief on behalf of a victim of a crime~~
12 ~~as a result of a violation of any statute enacted by the~~
13 ~~Legislature pursuant to subsection 2. No such violation~~
14 ~~authorizes setting aside a conviction or sentence or continuing~~
15 ~~or postponing a criminal proceeding.~~

16 ~~—4. A person may maintain an action to compel a public~~
17 ~~officer or employee to carry out any duty required by the~~
18 ~~Legislature pursuant to subsection 2.~~

19 ~~—5.1~~ No person shall be deprived of life, liberty, or
20 property, without due process of law.

21 ~~16.1~~ 3. Private property shall not be taken for public use
22 without just compensation having been first made, or secured,
23 except in cases of war, riot, fire, or great public peril, in
24 which case compensation shall be afterward made.



THE ONE HUNDRED AND TENTH DAY

CARSON CITY (Friday), May 26, 2017

Assembly called to order at 8:37 p.m.

Mr. Speaker presiding.

Roll called.

All present except Assemblyman Hansen, who was excused.

Prayer by the Chaplain, Reverend Richard Snyder.

Loving God, Your work in the world is done by many people in many ways using the many gifts and talents You give. Bless all the members of this Assembly and all who work for this House. Guide them by Your Spirit as they deal with the issues facing this state.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

Assembly Daily Journal

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Government Affairs, to which were referred Senate Bills Nos. 25, 501, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

EDGAR FLORES, *Chair*

Mr. Speaker:

Your Committee on Judiciary, to which was referred Senate Bill No. 259, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

STEVE YEAGER, *Chair*

Mr. Speaker:

Your Committee on Legislative Operations and Elections, to which was referred Assembly Bill No. 296, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Legislative Operations and Elections, to which was referred Senate Joint Resolution No. 17 of the 78th Session, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

OLIVIA DIAZ, *Chair*

Mr. Speaker:

Your Committee on Natural Resources, Agriculture, and Mining, to which were referred Senate Bills Nos. 512, 514, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

HEIDI SWANK, *Chair*

— 275 —

Senate Bill No. 352.

Bill read third time.

Roll call on Senate Bill No. 352:

YEAS—41.

NAYS—None.

EXCUSED—Hansen.

Senate Bill No. 352 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Joint Resolution No. 17 of the 78th Session.

Resolution read third time.

Roll call on Senate Joint Resolution No. 17 of the 78th Session:

YEAS—41.

NAYS—None.

EXCUSED—Hansen.

Senate Joint Resolution No. 17 of the 78th Session having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Resolution ordered transmitted to the Senate.

Senate Bill No. 232.

Bill read third time.

Roll call on Senate Bill No. 232:

YEAS—28.

NAYS—Paul Anderson, Edwards, Ellison, Hambrick, Krasner, Marchant, McArthur, Oscarson, Pickard, Titus, Tolles, Wheeler, Woodbury—13.

EXCUSED—Hansen.

Senate Bill No. 232 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 357.

Bill read third time.

Roll call on Senate Bill No. 357:

YEAS—27.

NAYS—Paul Anderson, Edwards, Ellison, Hambrick, Kramer, Krasner, Marchant, McArthur, Oscarson, Pickard, Titus, Tolles, Wheeler, Woodbury—14.

EXCUSED—Hansen.

Senate Bill No. 357 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 291.

Bill read third time.

Roll call on Senate Bill No. 291:

YEAS—41.

NAYS—None.

EXCUSED—Hansen.

NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE ONE HUNDRED AND THIRTEENTH DAY

CARSON CITY (Monday), May 29, 2017

Senate called to order at 3:58 p.m.

President Hutchison presiding.

Roll called.

All present.

Prayer by Senator Hammond.

Our Heavenly Father, we are grateful to be here together gathered as a body, to memorialize on this day those who have given their lives in the defense of their Country and the ideals they represent. We appreciate all they have done for us and we pray, Father, as a collective body of individuals, we might continue to fulfil the responsibility we have been given that these individuals have laid their lives down in order for us to do.

May we continue our conversations, and may we continue to work for the people of the State of Nevada and our own individual constituents. We are thankful, Father, for all of those who are here and we pray we will have the stamina to continue through next week until the end.

We pray this in the Name of Jesus Christ.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Finance, to which was referred Senate Bill No. 527, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Finance, to which was re-referred Senate Bill No. 88, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Finance, to which was re-referred Senate Bill No. 306, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass as amended.

Also, your Committee on Finance, to which was referred Senate Bill No. 522, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Senate Daily Journal

- 2 -

Also, your Committee on Finance, to which were re-referred Senate Bills Nos. 126, 225, 355, 373, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOYCE WOODHOUSE, *Chair*

Mr. President:

Your Committee on Government Affairs, to which was referred Senate Bill No. 486, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

DAVID R. PARKS, *Chair*

Mr. President:

Your Committee on Revenue and Economic Development, to which was referred Assembly Bill No. 492, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

JULIA RATTI, *Chair*

MESSAGES FROM THE GOVERNOR

STATE OF NEVADA
EXECUTIVE CHAMBER
CARSON CITY, NEVADA 89701

MAY 25, 2017

THE HONORABLE AARON D. FORD
THE HONORABLE JASON FRIERSON
Nevada Legislature
401 South Carson Street
Carson City, Nevada 89701

DEAR MAJORITY LEADER FORD AND SPEAKER FRIERSON:

I am returning Senate Bill No. 140 to the 79th Session of the Nevada Legislature accompanied by my letter of objection.

Sincerely,

BRIAN SANDOVAL
Governor of Nevada

MAY 26, 2017

THE HONORABLE AARON D. FORD
THE HONORABLE JASON FRIERSON
Nevada Legislature
401 South Carson Street
Carson City, Nevada 89701

DEAR MAJORITY LEADER FORD AND SPEAKER FRIERSON:

I am returning Senate Bill No. 173 to the 79th Session of the Nevada Legislature accompanied by me letter of objection.

Sincerely,

BRIAN SANDOVAL
Governor of Nevada

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 26, 2017

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bills Nos. 3, 25, 41, 138, 324, 369, 501, 512; Senate Joint Resolutions Nos. 8, 12, 13; Assembly Bills Nos. 23, 512, 514.

Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bills Nos. 7, 52, 122, 124, 159, 280, 296, 354, 362, 421, 440.

Also, I have the honor to inform your honorable body that the Assembly amended, and on this day passed, as amended, Senate Bill No. 65, Amendment No. 816; Senate Bill No. 84,

Senate Daily Journal

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Amendment No. 840; Senate Bill No. 144, Amendment No. 892; Senate Bill No. 149, Amendments Nos. 767, 938, 984; Senate Bill No. 162, Amendment No. 725; Senate Bill No. 199, Amendment No. 728; Senate Bill No. 232, Amendments Nos. 815, 929, 959; Senate Bill No. 251, Amendment No. 834; Senate Bill No. 259, Amendment No. 948; Senate Bill No. 268, Amendment No. 663; Senate Bill No. 270, Amendment No. 835; Senate Bill No. 283, Amendment No. 690; Senate Bill No. 291, Amendments Nos. 888, 985; Senate Bill No. 320, Amendment No. 768; Senate Bill No. 350, Amendment No. 828; Senate Bill No. 352, Amendment No. 879; Senate Bill No. 357, Amendments Nos. 934, 971; Senate Bill No. 398, Amendment No. 681; Senate Bill No. 399, Amendment No. 688; Senate Bill No. 400, Amendment No. 989; Senate Bill No. 415, Amendment No. 878; Senate Bill No. 452, Amendments Nos. 689, 978; Senate Bill No. 460, Amendment No. 687; Senate Bill No. 468, Amendment No. 733; Senate Bill No. 516, Amendment No. 941; Senate Joint Resolution No. 1, Amendment No. 792; Senate Joint Resolution No. 3, Amendment No. 764; Senate Joint Resolution No. 17 of the 78th Session, Amendment No. 894, and respectfully requests your honorable body to concur in said amendments.

CAROL AIELLO-Sala

Assistant Chief Clerk of the Assembly

ASSEMBLY CHAMBER, Carson City, May 29, 2017

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bills Nos. 137, 496, 518, 524.

Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bills Nos. 127, 291, 326, 328, 414, 468.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 849 to Assembly Bill No. 77; Senate Amendment No. 703 to Assembly Bill No. 150; Senate Amendment No. 855 to Assembly Bill No. 161; Senate Amendment No. 674 to Assembly Bill No. 234; Senate Amendment No. 851 to Assembly Bill No. 320; Senate Amendment No. 695 to Assembly Bill No. 321; Senate Amendment No. 795 to Assembly Bill No. 379; Senate Amendment No. 952 to Assembly Bill No. 384; Senate Amendment No. 740 to Assembly Bill No. 415; Senate Amendments Nos. 907, 806 to Assembly Bill No. 418; Senate Amendment No. 783 to Assembly Bill No. 431; Senate Amendment No. 930 to Assembly Bill No. 447; Senate Amendment No. 860 to Assembly Bill No. 457; Senate Amendment No. 739 to Assembly Bill No. 461; Senate Amendment No. 812 to Assembly Bill No. 485; Senate Amendment No. 804 to Assembly Joint Resolution No. 5.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to concur in Senate Amendment No. 953 to Assembly Bill No. 45; Senate Amendment No. 697 to Assembly Bill No. 454.

CAROL AIELLO-Sala

Assistant Chief Clerk of the Assembly

WAIVERS AND EXEMPTIONS

NOTICE OF EXEMPTION

May 26, 2017

The Fiscal Analysis Division, pursuant to Joint Standing Rule No. 14.6, has determined the eligibility for exemption of: Senate Bill No. 226.

CINDY JONES

Fiscal Analysis Division

WAIVER OF JOINT STANDING RULE(S)

A Waiver requested by Assemblyman Frierson

For: Senate Bill No. 492.

To Waive:

Subsection 4 of Joint Standing Rule No. 14.3 (out of 2nd house by 110th day).

Has been granted effective: Monday, May 29, 2017.

AARON D. FORD

Senate Majority Leader

JASON FRIERSON

Speaker of the Assembly

NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE ONE HUNDRED AND FIFTEENTH DAY

CARSON CITY (Wednesday), May 31, 2017

Senate called to order at 11:51 a.m.

President pro Tempore presiding.

Roll called.

All present.

Prayer by the Chaplain, Deacon Gil Coleman.

Good and gracious God, we thank You for the blessing of our State and our Nation. Help all of us who have the privilege to live here to understand and accept the responsibility to care for our home and those with whom we share it. As the Session of the Nevada Legislature comes to a close, bless and sustain our Senators as they complete the vital work they have left for our State and its people. Help them to find a sense of duty and comradeship as they seek what is best for those of us who have put our confidence in them.

We make this prayer as a people of trust and faith.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President pro Tempore and Secretary are authorized to make the necessary corrections and additions.

Senator Ford moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 11:53 a.m.

SENATE IN SESSION

At 12:04 p.m.

President pro Tempore Denis presiding.

Quorum present.

REPORTS OF COMMITTEES

Mr. President pro Tempore:

Your Committee on Education, to which were referred Assembly Bills Nos. 7, 124, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MOISES DENIS, *Chair*

apply to a driver authorization card and an instruction permit obtained in accordance with this section.

Sec. 2. ~~[NRS 483.380 is hereby amended to read as follows:~~
~~483.380 1. Except as otherwise provided in NRS 483.283,~~
~~every driver's license and driver authorization card expires as prescribed by~~
~~regulation.~~

~~2. The Department shall adopt regulations prescribing when a driver's~~
~~license [expires.] and a driver authorization card expire. The Department~~
~~may, by regulation, defer the expiration of the driver's license or driver~~
~~authorization card of a person who is on active duty in the Armed Forces~~
~~upon such terms and conditions as it may prescribe. The Department may~~
~~similarly defer the expiration of the driver's license or driver authorization~~
~~card of the spouse or dependent son or daughter of that person if the spouse~~
~~or child is residing with the person.~~

~~3. Except as otherwise required by federal law, the regulations required~~
~~pursuant to subsection 2 must ensure that the period between the issuance~~
~~and expiration of a driver authorization card is equal to the period between~~
~~the issuance and expiration of a driver's license.] (Deleted by amendment.)~~

Sec. 3. ~~[As soon as practicable after July 1, 2017, the Department of~~
~~Motor Vehicles shall adopt the regulations required pursuant to~~
~~NRS 483.380, as amended by section 2 of this act.] (Deleted by amendment.)~~

Sec. 4. This act becomes effective on July 1, 2017.

Senator Ratti moved the adoption of the amendment.

Remarks by Senator Ratti.

Amendment No. 972 to Senate Bill No. 322 changes the date from the date of issuance to the date of birth date.

Amendment adopted.

Bill read third time.

Remarks by Senator Atkinson.

Assembly Bill No. 322 provides that a driver authorization card expires on the fourth anniversary of the holder's birthday, measured from the birthday nearest the date of issuance or renewal.

Roll call on Assembly Bill No. 322:

YEAS—12.

NAYS—Gansert, Goicoechea, Gustavson, Hammond, Hardy, Harris, Kieckhefer, Roberson, Settlemeyer—9.

Assembly Bill No. 322 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS
 CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Joint Resolution No. 17 of the 78th Session.

The following Assembly amendment was read.

Amendment No. 894.

SUMMARY—Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

Under the Nevada Constitution, the Legislature is required to provide by law for certain rights of the victims of crimes, in particular, the right to be informed of the status of criminal proceedings concerning those crimes, the right to be present at public hearings concerning those crimes and the right to be heard at all proceedings for the sentencing or release of persons convicted of those crimes. (Nev. Const. Art. 1, § 8)

This resolution proposes to amend the Nevada Constitution to eliminate the existing provisions of Article 1, Section 8, concerning victims' rights and to add a new section that sets forth an expanded list of such rights in the form of a victims' bill of rights. The new section is modeled after the victims' bill of rights set forth in the California Constitution as it was amended in 2008 by what is commonly referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

Under the Nevada Constitution, in order for the Legislature to submit a resolution proposing state constitutional amendments to the voters for approval and ratification: (1) the Legislature must pass the resolution for a first time; and (2) the next Legislature also must pass the same resolution, without any legislative amendments, for a second time. (Nev. Const. Art. 16, § 1; *Selzer v. Synhorst*, 113 N.W.2d 724, 733 (Iowa 1962) ("A constitutional amendment so initiated by the legislature must be passed in the same form by two successive sessions of the legislature and then approved by a vote of the people."); *State ex rel. Owen v. Donald*, 151 N.W. 331, 342 (Wis. 1915) ("At the next session of the legislature each of the two houses must agree to the precise proposal agreed to at the previous session.") If the next Legislature amends the resolution and passes it as amended, the legislative amendments start anew the process of amending the Nevada Constitution. (*Coleman v. Pross*, 246 S.E.2d 613, 620 (Va. 1978))

This resolution was initially passed by the 2015 Legislature during the 78th Session and returned for consideration by the 2017 Legislature during the 79th Session to determine whether to pass the same resolution, without any legislative amendments, for a second time. (Nev. Const. Art. 16, § 1; NRS 218D.800) However, the 2017 Legislature amended this resolution. Therefore, if the 2017 Legislature passes this resolution as amended, it also must be passed by the next Legislature and then approved and ratified by the voters in an election before the proposed amendments to the Nevada Constitution become effective.

Resolved by the Senate and Assembly of the State of Nevada, Jointly, That a new section, designated Section 23, be added to Article 1 of the Nevada Constitution to read as follows:

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family.

(e) To refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(f) To reasonably confer with the prosecuting agency, upon request, regarding the case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing, and at any parole proceeding.

(i) To the timely disposition of the case following the arrest of the defendant.

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(l) To full and timely restitution.

(m) To the prompt return of legal property when no longer needed as evidence.

(n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(o) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

(p) To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim.

(q) To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.

2. A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case. The court shall promptly rule on a victim's request. A defendant does not have standing to assert the rights of his or her victim. This section does not alter the powers, duties or responsibilities of a prosecuting attorney. A victim does not have the status of a party in a criminal proceeding.

3. Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction.

4. A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.

5. The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

6. The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.

7. In interpreting and applying the provisions of this section, a court may balance the rights of the victim set forth in this section against the needs of society for effective, efficient and orderly judicial administration of the criminal or juvenile justice process.

8. As used in this section, "victim" means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.

And be it further

Resolved, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

~~2. [The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~—3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~—4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~—5.]~~ No person shall be deprived of life, liberty, or property, without due process of law.

~~[6.]~~ 3. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

Senator Segerblom moved that the Senate do not concur in Assembly Amendment No. 894 to Senate Joint Resolution No. 17 of the 78th Session.

Motion carried.

Resolution ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

President Hutchison announced that the following bills are ready to be immediately transmitted to the Assembly: Assembly Bills Nos. 235, 244,

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267, 306, 317, 390, 392, 478; Senate Joint Resolution No. 6, Senate Joint Resolution No. 17 of the 78th Session.

UNFINISHED BUSINESS

There being no objections, the President and Secretary signed Senate Bills Nos. 65, 84, 149, 162, 199, 251, 268, 270, 283, 291, 320, 350, 352, 357, 398, 399, 400, 415, 452, 460, 468, 516; Senate Joint Resolutions Nos. 1, 3.

Senator Ford moved that the Senate adjourn until Thursday, June 1, 2017, at 11:00 a.m.

Motion carried.

Senate adjourned at 8:29 p.m.

Approved:

MARK A. HUTCHISON
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate

UNION LABEL

THE ONE HUNDRED AND FIFTEENTH DAY

CARSON CITY (Wednesday), May 31, 2017

Assembly called to order at 12:34 p.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by Assemblywoman Maggie Carlton.

I will start afresh each new day with petty littleness freed. I will cease to stand complaining of my ruthless neighbor's greed. I will cease to sit repining while my duty's call is clear. I will waste no moment whining, and my heart shall know no fear. I will not be swayed by envy when my rival's strength is shown. I will not deny his merit, but I will try to prove my own. I will try to see the beauty spread before me, rain or shine. I will cease to preach your duty and be more concerned with mine. If a task is once begun, never leave it until it is done. Be the labor great or small, do it well or not at all.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Judiciary, to which was referred Senate Bill No. 541, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

STEVE YEAGER, *Chair*

Mr. Speaker:

Your Committee on Ways and Means, to which were referred Assembly Bills Nos. 517, 518, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Ways and Means, to which was rereferred Assembly Bill No. 395, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Ways and Means, to which was rereferred Assembly Bill No. 207, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MAGGIE CARLTON, *Chair*

MOTIONS, RESOLUTIONS AND NOTICES

Assemblywoman Benitez-Thompson moved that Assembly Bill No. 518 be taken from the General File and placed on the Chief Clerk's desk.

Remarks by Assemblywoman Benitez-Thompson.

Motion carried.

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and 541; Senate Joint Resolution No. 14 be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

Mr. Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 8:53 p.m.

ASSEMBLY IN SESSION

At 9:04 p.m.

Mr. Speaker presiding.

Quorum present.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Ways and Means, to which was rereferred Assembly Bill No. 382, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MAGGIE CARLTON, *Chair*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, May 31, 2017

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 267, Amendments Nos. 780, 1031, and respectfully requests your honorable body to concur in said amendments.

Also, I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bills Nos. 235, 317, 392; Senate Joint Resolution No. 6.

Also, I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bills Nos. 244, 306.

Also, I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bills Nos. 390, 478.

Also, I have the honor to inform your honorable body that the Senate on this day respectfully refused to concur in the Assembly Amendment No. 894 to Senate Joint Resolution No. 17 of the 78th Session.

SHERRY RODRIGUEZ

Assistant Secretary of the Senate

MOTIONS, RESOLUTIONS AND NOTICES

Senate Joint Resolution No. 6.

Assemblywoman Benitez-Thompson moved that the resolution be referred to the Committee on Legislative Operations and Elections.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

Senate Bill No. 235.

Assemblywoman Benitez-Thompson moved that the bill be referred to the Committee on Judiciary.

Motion carried.

THE ONE HUNDRED AND EIGHTEENTH DAY

CARSON CITY (Saturday), June 3, 2017

Assembly called to order at 1:30 p.m.

Mr. Speaker presiding.

Roll called.

All present except Assemblymen Oscarson and Woodbury, who were excused.

Prayer by Assemblywoman Ellen Spiegel.

Please guard my lips from evil and my lips from speaking guile. And to those who slander me, let me give no heed. May my heart be open and forgiving unto all. As we proceed today and throughout the rest of this session and the rest of our lives, may we all be open to the words and understanding of our colleagues and do what is right in our heart and what is right for this state.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Education, to which was referred Senate Bill No. 390, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

TYRONE THOMPSON, *Chair*

Mr. Speaker:

Your Committee on Government Affairs, to which was referred Senate Bill No. 478, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

EDGAR FLORES, *Chair*

Mr. Speaker:

Your Committee on Judiciary, to which was referred Senate Bill No. 203, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

STEVE YEAGER, *Chair*

Mr. Speaker:

Your Committee on Legislative Operations and Elections, to which was referred Senate Concurrent Resolution No. 6, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

OLIVIA DIAZ, *Chair*

obvious that the charge is not supported by probable cause or cannot be proved at the time of trial.

2. *The court may grant probation to or suspend the sentence of a person to assign the person to a program for the treatment of veterans and members of the military pursuant to NRS 176A.290 if the charge is for a first violation of the provisions of NRS 484C.110 or 484C.120 that is punishable as a misdemeanor.*

3. If the person who violated the provisions of NRS 484C.110 or 484C.120 possesses a driver's license issued by a state other than the State of Nevada and does not reside in the State of Nevada, in carrying out the provisions of subparagraph (1) of paragraph (a) of subsection 1 of NRS 484C.400, the court shall:

(a) Order the person to pay tuition for and submit evidence of completion of an educational course on the abuse of alcohol and controlled substances approved by a governmental agency of the state of the person's residence within the time specified in the order; or

(b) Order the person to complete an educational course by correspondence on the abuse of alcohol and controlled substances approved by the Department within the time specified in the order,

→ and the court shall notify the Department if the person fails to complete the assigned course within the specified time.

Sec. 13. This act becomes effective upon passage and approval.

Assemblyman Ohrenschall moved that the Assembly concur in the Senate Amendment No. 939 to Assembly Bill No. 286.

Remarks by Assemblyman Ohrenschall.

ASSEMBLYMAN OHRENSCHALL:

There were two bills, both houses, dealing with our veterans' courts. Assembly Bill 286 was sponsored by my colleague from Assembly District 15. He worked tirelessly on this. He worked with the vice chairman of Senate Judiciary over on the other side, and I think they made the bill even better, worked together, and this is the final product. I think my colleague from Assembly District 15 deserves a lot of commendation on this because I believe it will help a lot of our vets who find themselves in the criminal justice system. We like this amendment too.

Motion carried by a constitutional majority.

Bill ordered to enrollment.

RECEDE FROM ASSEMBLY AMENDMENTS

Assemblywoman Diaz moved that the Assembly do not recede from its action on Senate Joint Resolution No. 17 of the 78th Session, that a conference be requested, and that Mr. Speaker appoint a Conference Committee consisting of three members to meet with a like committee of the Senate.

Remarks by Assemblywoman Diaz.

Motion carried.

APPOINTMENT OF CONFERENCE COMMITTEES

Mr. Speaker appointed Assemblymen Joiner, Monroe-Moreno, and Hambrick as a Conference Committee to meet with a like committee of the Senate for the further consideration of Senate Joint Resolution No. 17 of the 78th Session.

CONSIDERATION OF SENATE AMENDMENTS

Assembly Bill No. 322.

The following Senate amendment was read:

Amendment No. 972.

AN ACT relating to driver authorization cards; revising provisions governing the administration of driver authorization cards; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Department of Motor Vehicles to adopt regulations prescribing the period for which a driver's license is valid. (NRS 483.380) Those regulations specify that a driver's license expires on the eighth anniversary or fourth anniversary of the birthday of the licensee, depending upon certain circumstances. (NAC 483.043) Under existing law a driver authorization card expires on the anniversary of its issuance or renewal. (NRS 483.291) **Section 1** of this bill removes the annual expiration requirement for a driver authorization card, and ~~[section 2 of this bill]~~ requires instead that ~~[the regulations which prescribe the date of expiration of a driver's license also prescribe the date of expiration of a driver authorization card and that they must be valid for the same period, unless otherwise required by federal law.]~~ such a card expires on the fourth anniversary of the holder's birthday, measured from the birthday nearest the date of issuance or renewal.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 483.291 is hereby amended to read as follows:

483.291 1. An application for an instruction permit or for a driver authorization card must:

- (a) Be made upon a form furnished by the Department.
- (b) Be verified by the applicant before a person authorized to administer oaths. Officers and employees of the Department may administer those oaths without charge.
- (c) Be accompanied by the required fee.
- (d) State the name, date of birth, sex and residence address of the applicant and briefly describe the applicant.
- (e) State whether the applicant has theretofore been licensed as a driver, and, if so, when and by what state or country, and whether any such license has ever been

NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE ONE HUNDRED AND NINETEENTH DAY

CARSON CITY (Sunday), June 4, 2017

Senate called to order at 1:54 p.m.

President Hutchison presiding.

Roll called.

All present.

Prayer by Senator Spearman.

Dear God, Creator of the Universe, Giver of all that is good, we come to You this day, and we thank You for all the many blessings that You have bestowed upon us. Yet, we are mindful of those who are still suffering, suffering because of discrimination, suffering in the social margins. We pray that our work here would alleviate those sufferings, and we pray, God, that we would be the instruments of Your hands to do good in this world.

This we pray, in the One Holy name.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Finance, to which was referred Assembly Bill No. 499, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Finance, to which was re-referred Assembly Bill No. 486, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

JOYCE WOODHOUSE, *Chair*

Mr. President:

Your Committee on Judiciary, to which was referred Assembly Bill No. 97, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

TICK SEGERBLOM, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, June 3, 2017

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bills Nos. 146, 225, 355, 373, 402, 427.

Also, I have the honor to inform your honorable body that the Assembly amended, and on this day passed, as amended, Senate Bill No. 124, Amendment No. 1083; Senate Bill No. 344, Amendments Nos. 881, 1114; Senate Bill No. 361, Amendment No. 1082, and respectfully requests your honorable body to concur in said amendments.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 931 to Assembly Bill No. 110; Senate Amendment No. 1063 to Assembly Bill No. 127; Senate Amendment No. 1098 to Assembly Bill No. 175; Senate Amendment No. 896 to Assembly Bill No. 205; Senate Amendments Nos. 780, 1031 to Assembly Bill No. 267; Senate Amendments Nos. 1099, 1104 to Assembly Bill No. 328; Senate Amendment No. 781 to Assembly Bill No. 339; Senate Amendments Nos. 869, 967 to Assembly Bill No. 408; Senate Amendment No. 1052 to Assembly Bill No. 468; Senate Amendment No. 1102 to Assembly Bill No. 472.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to concur in Senate Amendment No. 858 to Assembly Bill No. 359.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to recede from its action on Senate Bill No. 47, Assembly Amendment No. 832, and requests a conference, and appointed Assemblymen Swank, Carlton and Kramer as to meet with a like committee of the Senate.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to recede from its action on Senate Bill No. 144, Assembly Amendment No. 892, and requests a conference, and appointed Assemblymen Diaz, Ohrenschall and Oscarson as a Conference Committee to meet with a like committee of the Senate.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to recede from its action on Senate Bill No. 259, Assembly Amendment No. 948, and requests a conference, and appointed Assemblymen Yeager, Fumo and Wheeler as a Conference Committee to meet with a like committee of the Senate.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to recede from its action on Senate Joint Resolution No. 17 of the 78th Session, Assembly Amendment No. 894, and requests a conference, and appointed Assemblymen Joiner, Monroe-Moreno and Hambrick as a Conference Committee to meet with a like committee of the Senate.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Diaz, Benitez-Thompson and Hambrick as a Conference Committee concerning Assembly Bill No. 45.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Sprinkle, Benitez-Thompson and Titus as a Conference Committee concerning Assembly Bill No. 249.

CAROL AIELLO-SALA

Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Senator Ford moved that Senate Bill No. 539 be taken from the General File and placed on the Secretary's desk.

Motion carried.

Senator Ford moved that Assembly Bill No. 382 and Assembly Joint Resolution No. 14 be placed at the top of the General File after the Senate bills.

Motion carried.

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President Hutchison appointed Senators Cannizzaro, Segerblom and Gansert as a Conference Committee to meet with a like committee of the Assembly for the further consideration of Senate Bill No. 144.

President Hutchison appointed Senators Farley, Manendo and Gustavson as a Conference Committee to meet with a like committee of the Assembly for the further consideration of Senate Bill No. 259.

President Hutchison appointed Senators Segerblom, Roberson and Ford as a Conference Committee to meet with a like committee of the Assembly for the further consideration of Senate Joint Resolution No. 17 of the 78th Session.

REMARKS FROM THE FLOOR

SENATOR HARDY:

When there are poisonous materials in the home, we have a Mr. Yuck on the bottle to warn kids not to eat or drink the item. We have childproof containers that keep children from using medications or getting into other hazardous items. I do not think we can go too far in protecting our children and those are things we should look at rather than listing every candy that exists because as soon as we leave one off, we will find another one.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Education, to which was referred Assembly Bill No. 475, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MOISES DENIS, *Chair*

Mr. President:

Your Committee on Finance, to which was re-referred Senate Bill No. 121, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass as amended.

JOYCE WOODHOUSE, *Chair*

Mr. President:

Your Committee on Senate Parliamentary Rules and Procedures has approved the consideration of: Amendment No. 1127 to Senate Concurrent Resolution No. 11.

KELVIN ATKINSON, *Chair*

Mr. President:

Your Committee on Transportation, to which was referred Assembly Bill No. 399, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

PATRICIA FARLEY, *Chair*

MOTIONS, RESOLUTIONS AND NOTICES

Senate Concurrent Resolution No. 11.

Resolution read.

The following amendment was proposed by Senator Spearman:

Amendment No. 1127.

SUMMARY—Urges the Legislative Commission to take certain actions to provide additional services in the Legislative Building for persons who are blind, deaf, hard of hearing or speech impaired. (BDR R-1229)~

THE ONE HUNDRED AND TWENTIETH DAY

CARSON CITY (Monday), June 5, 2017

Assembly called to order at 2:17 p.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by Assemblywoman Jill Tolles.

Lord, You say in Your Word, do nothing from selfishness or empty conceit. But in humility, count others more significant than yourselves. Let each of you look not only to your own interests but also to the interests of others. Have this mind among yourselves which is yours in Christ, Jesus.

Lord, thank You for these 120 days. I pray that we served the people of Nevada well. I pray You guide us in our final decisions and I pray, Lord, that we would serve with humility, with sacrifice; Lord that Your grace would cover all of our decisions, that Your power would go forth before us as we leave this place to bring good into this land.

Lord, I pray that You bless each and every one who came to serve their districts. I pray that You bless each and every one who served as staff and administration and leaders and press and the people in this building, God, who've come to let their voices be heard. I pray we heard them well and we acted in Jesus' precious Name.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Health and Human Services, to which was referred Senate Bill No. 286, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MICHAEL C. SPRINKLE, *Chair*

Mr. Speaker:

Your Committee on Judiciary, to which was referred Senate Bill No. 235, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

STEVE YEAGER, *Chair*

Mr. Speaker:

Your Committee on Taxation, to which were referred Senate Bills Nos. 487, 555, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

DINA NEAL, *Chair*

Mr. Speaker:

Your Committee on Ways and Means, to which was referred Senate Bill No. 546, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MAGGIE CARLTON, *Chair*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, June 4, 2017

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Assembly Bills Nos. 94, 348, 382, 388, 397, 407, 484, 487, 489, 493, 497, 501, 502, 503, 504, 511, 512, 519, 520, 521, 522; Assembly Joint Resolution No. 14.

Also, I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bill No. 539.

Also, I have the honor to inform your honorable body that the Senate on this day concurred in Assembly Amendment No. 1083 to Senate Bill No. 124.

Also, I have the honor to inform your honorable body that the Senate on this day appointed Senators Cannizzaro, Segerblom and Gansert as a Conference Committee concerning Senate Bill No. 144.

Also, I have the honor to inform your honorable body that the Senate on this day appointed Senators Farley, Manendo and Gustavson as a Conference Committee concerning Senate Bill No. 259.

Also, I have the honor to inform your honorable body that the Senate on this day appointed Senators Segerblom, Roberson and Ford as a Conference Committee concerning Senate Joint Resolution No. 17 of the 78th Session.

SHERRY RODRIGUEZ

Assistant Secretary of the Senate

SENATE CHAMBER, Carson City, June 5, 2017

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 97, Amendment No. 1131, and respectfully requests your honorable body to concur in said amendment.

Also, I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 206, Amendments Nos. 1126, 1144; Assembly Bill No. 475, Amendment No. 1150, and respectfully requests your honorable body to concur in said amendments.

Also, I have the honor to inform your honorable body that the Senate on this day concurred in Assembly Amendments Nos. 881, 1114 to Senate Bill No. 344.

Also, I have the honor to inform your honorable body that the Senate on this day receded from its action on Assembly Bill No. 420, Senate Amendment No. 827.

SHERRY RODRIGUEZ

Assistant Secretary of the Senate

INTRODUCTION, FIRST READING AND REFERENCE

Senate Bill No. 539.

Assemblywoman Benitez-Thompson moved that the bill be referred to the Committee on Ways and Means.

Motion carried.

NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE ONE HUNDRED AND TWENTIETH DAY

CARSON CITY (Monday), June 5, 2017

Senate called to order at 11:12 a.m.

President Hutchison presiding.

Roll called.

All present.

Prayer by President Hutchison.

Our Father who art in Heaven, we humbly come before Thee and bow our heads and give thanks for all of our many blessings. We are grateful, Father, first, to live in this beautiful Country of freedom and blessings and opportunities. We are grateful for the privilege that we have to serve and to be Thy servants, grateful for the friendships which we have, the collegiality which we enjoy, grateful for the good work which we have seen in this Session. We would ask You, Father, to please bless us with Thy Spirit, that we can continue to follow Thy example, that we may be kind, courteous and follow the dictates of Thy Commandments. We love Thee, Father. We are grateful for all that Thou has blessed us with and recognize Thy hand in all good things in our lives.

We say this in Thy Son's Name, Jesus Christ.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Ford moved that vetoed Senate Bills Nos. 265, 384, 397 of the 79th Session be made a special order of business for Monday, June 5, 2017, at 11:30 a.m.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 97.

Bill read third time.

Remarks by Senator Cannizzaro.

Assembly Bill No. 97 requires a law enforcement agency to submit a sexual assault forensic evidence kit (SAFE kit) to the applicable forensic laboratory responsible for conducting a genetic marker analysis within 30 days after receiving the kit. This requirement does not apply to

DEAR LEADER FORD:

I am returning Senate Bill 357 to the 79th Session of the Nevada Legislature without my approval, accompanied by my letter of objection.

Sincere regards,
BRIAN SANDOVAL
Governor

MOTIONS, RESOLUTIONS AND NOTICES

Senator Ford moved that Senate Bill No. 357 of the 79th Session be made a Special Order of Business for Monday, June 5, 2017, at 11:20 p.m.

Motion carried.

UNFINISHED BUSINESS
REPORTS OF CONFERENCE COMMITTEES

Mr. President:

The Conference Committee concerning Senate Joint Resolution No. 17 of the 78th Session, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 894 of the Assembly be receded from and a 2nd reprint be created in accordance with this action.

TICK SEGERBLOM
MICHAEL ROBERSON
AARON D. FORD

Senate Conference Committee

AMBER JOINER
DANIELE MONROE-MORENO
JOHN HAMBRICK

Assembly Conference Committee

Senator Roberson moved that the Senate adopt the report of the Conference Committee concerning Senate Joint Resolution No. 17 of the 78th Session.

Motion carried by a constitutional majority.

SPECIAL ORDERS OF THE DAY
VETO MESSAGES OF THE GOVERNOR

The hour of 11:20 p.m. having arrived, Vetoed Senate Bills Nos. 357 of the 79th Session were considered.

Vetoed Senate Bill No. 357 of the 79th Session.

Bill read.

Governor's message stating his objections read.

MESSAGES FROM THE GOVERNOR
STATE OF NEVADA
EXECUTIVE CHAMBER
CARSON CITY, NEVADA

June 5, 2017

THE HONORABLE AARON D. FORD, *Secretary of State*, Capitol Building
Carson City, Nevada 89710

DEAR LEADER FORD:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Senate Bill No. 357, which is entitled:

AN ACT relating to apprentices; prohibiting a public body from awarding certain acts for a public work to a contractor unless the contractor complies with certain requirements relating to the use of apprentices on public works or pays a monetary penalty; prohibiting a contractor on certain public works from awarding subcontracts for more than 5 percent of the value of the public work to a subcontractor unless the subcontractor complies with certain requirements relating to the use

THE ONE HUNDRED AND TWENTIETH DAY

CARSON CITY (Monday), June 5, 2017

Assembly called to order at 2:17 p.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by Assemblywoman Jill Tolles.

Lord, You say in Your Word, do nothing from selfishness or empty conceit. But in humility, count others more significant than yourselves. Let each of you look not only to your own interests but also to the interests of others. Have this mind among yourselves which is yours in Christ, Jesus.

Lord, thank You for these 120 days. I pray that we served the people of Nevada well. I pray You guide us in our final decisions and I pray, Lord, that we would serve with humility, with sacrifice; Lord that Your grace would cover all of our decisions, that Your power would go forth before us as we leave this place to bring good into this land.

Lord, I pray that You bless each and every one who came to serve their districts. I pray that You bless each and every one who served as staff and administration and leaders and press and the people in this building, God, who've come to let their voices be heard. I pray we heard them well and we acted in Jesus' precious Name.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Health and Human Services, to which was referred Senate Bill No. 286, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MICHAEL C. SPRINKLE, *Chair*

Mr. Speaker:

Your Committee on Judiciary, to which was referred Senate Bill No. 235, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

STEVE YEAGER, *Chair*

Mr. Speaker:

Your Committee on Taxation, to which were referred Senate Bills Nos. 487, 555, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

DINA NEAL, *Chair*

Assembly Daily Journal

— 635 —

Assembly Amendment No. 1044 to Senate Bill No. 541; Assembly Amendment No. 1154 to Senate Bill No. 553.

Also, I have the honor to inform your honorable body that the Senate on this day concurred in Assembly Amendment No. 1008 to Senate Bill No. 106; Assembly Amendment No. 1018 to Senate Bill No. 212; Assembly Amendment No. 1152 to Senate Bill No. 286; Assembly Amendment No. 1103 to Senate Bill No. 490.

SHERRY RODRIGUEZ
Assistant Secretary of the Senate

GENERAL FILE AND THIRD READING

Senate Bill No. 554.

Bill read third time.

Remarks by Assemblywoman Carlton.

ASSEMBLYWOMAN CARLTON:

Senate Bill 554 relating to transportation networks sets up a process whereby the drivers get their business license within six months, it is relayed through the TNC [transportation network company] and then to the Secretary of State's office.

Roll call on Senate Bill No. 554:

YEAS—32.

NAYS—Carlton, Daly, Flores, Jauregui, Joiner, McCurdy, Miller, Monroe-Moreno, Ohrenschall, Watkins—10.

Senate Bill No. 554 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, June 5, 2017

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day adopted the report of the Conference Committee concerning Senate Bill No. 376.

Also, I have the honor to inform your honorable body that the Senate on this day adopted the report of the Conference Committee concerning Senate Joint Resolution No. 17 of the 78th Session.

SHERRY RODRIGUEZ
Assistant Secretary of the Senate

UNFINISHED BUSINESS

REPORTS OF CONFERENCE COMMITTEES

Mr. Speaker:

The Conference Committee concerning Senate Bill No. 376, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 682 of the Assembly be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 9, which is attached to and hereby made a part of this report.

ASSEMBLYMAN STEVE YEAGER
ASSEMBLYMAN JAMES OHRENSCHALL

SENATOR TICK SEGERBLOM
SENATOR NICOLE J. CANNIZZARO

Assembly Conference Committee

Senate Conference Committee

Assembly Daily Journal

— 640 —

Mr. Speaker:

The Conference Committee concerning Senate Joint Resolution No. 17 of the 78th Session, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 894 of the Assembly be receded from and a 2nd reprint be created in accordance with this action.

ASSEMBLYWOMAN AMBER JOINER
ASSEMBLYWOMAN DANIELE MONROE-MORENO
ASSEMBLYMAN JOHN HAMBRICK
Assembly Conference Committee

SENATOR TICK SEGERBLOM
SENATOR MICHAEL ROBERSON
SENATOR AARON D. FORD
Senate Conference Committee

Assemblywoman Joiner moved that the Assembly adopt the report of the Conference Committee concerning Senate Joint Resolution No. 17 of the 78th Session.

Motion carried by a constitutional majority.

Mr. Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 11:33 p.m.

ASSEMBLY IN SESSION

At 11:38 p.m.

Mr. Speaker presiding.

Quorum present.

VETOED BILLS AND SPECIAL ORDERS OF THE DAY

OFFICE OF THE GOVERNOR

June 5, 2017

THE HONORABLE JASON FRIERSON, SPEAKER OF THE NEVADA ASSEMBLY, 401 South Carson Street, Carson City, NV 89701

RE: Assembly Bill 290 of the 79th Legislative Session

DEAR SPEAKER FRIERSON:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Assembly Bill 290 ("AB 290"), which is entitled:

AN ACT relating to collective bargaining by local governments; revising certain provisions relating to employee leave; and providing other matters properly relating thereto.

AB 290 is a rollback of important, comprise legislation from the 2015 Legislative Session, and it is comparable in intent and effect to two other bills that have recently been vetoed. Assembly Bill 271 was vetoed on May 25th, 2017, and Senate Bill 356 was vetoed on June 1, 2017. Like AB 290, both of those vetoed bills also contained similar rollbacks of reasonable 2015 reforms. There is no justification for treating the proposals in AB 290 any differently than those that have already been considered and rejected, and I incorporate by reference the two prior veto statements in AB 271 and SB 356.

For these reasons, I veto Assembly Bill 290 and return it without my signature or approval.

Sincere regards,
BRIAN SANDOVAL
Governor

(Reprinted to remove amendment receded from on June 5, 2017)

SECOND REPRINT

S.J.R. 17 of the 78th Session,
as Amended by the 79th Session

SENATE JOINT RESOLUTION NO. 17 OF THE 78TH SESSION—
SENATORS ROBERSON, HARRIS, FARLEY; HARDY AND
SETTELMAYER

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Proposes to amend the Nevada Constitution to
expand the rights guaranteed to victims of crime.
(BDR C-952)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada
Constitution to expand the rights guaranteed to victims of
crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

1 Under the Nevada Constitution, the Legislature is required to provide by law
2 for certain rights of the victims of crimes, in particular, the right to be informed of
3 the status of criminal proceedings concerning those crimes, the right to be present
4 at public hearings concerning those crimes and the right to be heard at all
5 proceedings for the sentencing or release of persons convicted of those crimes.
6 (Nev. Const. Art. 1, § 8)

7 This resolution proposes to amend the Nevada Constitution to eliminate the
8 existing provisions of Article 1, section 8, concerning victims' rights and to add a
9 new section that sets forth an expanded list of such rights in the form of a victims'
10 bill of rights. The new section is modeled after the victims' bill of rights set forth in
11 the California Constitution as it was amended in 2008 by what is commonly
12 referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

1 RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF
2 NEVADA, JOINTLY, That a new section, designated Section 23, be
3 added to Article 1 of the Nevada Constitution to read as follows:

4 ***Sec. 23. 1. Each person who is the victim of a crime***
5 ***is entitled to the following rights:***



1 (a) *To be treated with fairness and respect for his or her*
2 *privacy and dignity, and to be free from intimidation,*
3 *harassment and abuse, throughout the criminal or juvenile*
4 *justice process.*

5 (b) *To be reasonably protected from the defendant and*
6 *persons acting on behalf of the defendant.*

7 (c) *To have the safety of the victim and the victim's*
8 *family considered as a factor in fixing the amount of bail*
9 *and release conditions for the defendant.*

10 (d) *To prevent the disclosure of confidential information*
11 *or records to the defendant which could be used to locate or*
12 *harass the victim or the victim's family.*

13 (e) *To refuse an interview or deposition request, unless*
14 *under court order, and to set reasonable conditions on the*
15 *conduct of any such interview to which the victim consents.*

16 (f) *To reasonably confer with the prosecuting agency,*
17 *upon request, regarding the case.*

18 (g) *To reasonable notice of all public proceedings,*
19 *including delinquency proceedings, upon request, at which*
20 *the defendant and the prosecutor are entitled to be present*
21 *and of all parole or other postconviction release*
22 *proceedings, and to be present at all such proceedings.*

23 (h) *To be reasonably heard, upon request, at any public*
24 *proceeding, including any delinquency proceeding, in any*
25 *court involving release or sentencing, and at any parole*
26 *proceeding.*

27 (i) *To the timely disposition of the case following the*
28 *arrest of the defendant.*

29 (j) *To provide information to any public officer or*
30 *employee conducting a presentence investigation*
31 *concerning the impact of the offense on the victim and the*
32 *victim's family and any sentencing recommendations before*
33 *the sentencing of the defendant.*

34 (k) *To be informed, upon request, of the conviction,*
35 *sentence, place and time of incarceration, or other*
36 *disposition of the defendant, the scheduled release date of*
37 *the defendant and the release of or the escape by the*
38 *defendant from custody.*

39 (l) *To full and timely restitution.*

40 (m) *To the prompt return of legal property when no*
41 *longer needed as evidence.*

42 (n) *To be informed of all postconviction proceedings, to*
43 *participate and provide information to the parole authority*
44 *to be considered before the parole of the offender and to be*



1 notified, upon request, of the parole or other release of the
2 offender.

3 (o) To have the safety of the victim, the victim's family
4 and the general public considered before any parole or
5 other postjudgment release decision is made.

6 (p) To have all monetary payments, money and property
7 collected from any person who has been ordered to make
8 restitution be first applied to pay the amounts ordered as
9 restitution to the victim.

10 (q) To be specifically informed of the rights enumerated
11 in this section, and to have information concerning those
12 rights be made available to the general public.

13 2. A victim has standing to assert the rights
14 enumerated in this section in any court with jurisdiction
15 over the case. The court shall promptly rule on a victim's
16 request. A defendant does not have standing to assert the
17 rights of his or her victim. This section does not alter the
18 powers, duties or responsibilities of a prosecuting attorney.
19 A victim does not have the status of a party in a criminal
20 proceeding.

21 3. Except as otherwise provided in subsection 4, no
22 person may maintain an action against this State or any
23 public officer or employee for damages or injunctive,
24 declaratory or other legal or equitable relief on behalf of a
25 victim of a crime as a result of a violation of this section or
26 any statute enacted by the Legislature pursuant thereto. No
27 such violation authorizes setting aside a conviction.

28 4. A person may maintain an action to compel a public
29 officer or employee to carry out any duty required by this
30 section or any statute enacted by the Legislature pursuant
31 thereto.

32 5. The granting of these rights to victims must not be
33 construed to deny or disparage other rights possessed by
34 victims. A parole authority shall extend the right to be heard
35 at a parole hearing to any person harmed by the offender.

36 6. The Legislature shall by law provide any other
37 measure necessary or useful to secure to victims of crime
38 the benefit of the rights set forth in this section.

39 7. As used in this section, "victim" means any person
40 directly and proximately harmed by the commission of a
41 criminal offense under any law of this State. If the victim is
42 less than 18 years of age, incompetent, incapacitated or
43 deceased, the term includes the legal guardian of the victim
44 or a representative of the victim's estate, member of the
45 victim's family or any other person who is appointed by the



* S J R 1 7 7 8 R 2 *

court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.

And be it further

RESOLVED, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

~~2. {The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~5.†~~ No person shall be deprived of life, liberty, or property, without due process of law.



* S J R 1 7 7 8 R 2 *

1 ~~16.1~~ 3. Private property shall not be taken for public use
2 without just compensation having been first made, or secured,
3 except in cases of war, riot, fire, or great public peril, in
4 which case compensation shall be afterward made.

③⑩



* S J R 1 7 7 8 R 2 *

NEVADA LEGISLATURE

Seventy-ninth Session, 2017

SENATE DAILY JOURNAL

THE ONE HUNDRED AND TWENTIETH DAY

CARSON CITY (Monday), June 5, 2017

Senate called to order at 11:12 a.m.

President Hutchison presiding.

Roll called.

All present.

Prayer by President Hutchison.

Our Father who art in Heaven, we humbly come before Thee and bow our heads and give thanks for all of our many blessings. We are grateful, Father, first, to live in this beautiful Country of freedom and blessings and opportunities. We are grateful for the privilege that we have to serve and to be Thy servants, grateful for the friendships which we have, the collegiality which we enjoy, grateful for the good work which we have seen in this Session. We would ask You, Father, to please bless us with Thy Spirit, that we can continue to follow Thy example, that we may be kind, courteous and follow the dictates of Thy Commandments. We love Thee, Father. We are grateful for all that Thou has blessed us with and recognize Thy hand in all good things in our lives.

We say this in Thy Son's Name, Jesus Christ.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Ford moved that vetoed Senate Bills Nos. 265, 384, 397 of the 79th Session be made a special order of business for Monday, June 5, 2017, at 11:30 a.m.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 97.

Bill read third time.

Remarks by Senator Cannizzaro.

Assembly Bill No. 97 requires a law enforcement agency to submit a sexual assault forensic evidence kit (SAFE kit) to the applicable forensic laboratory responsible for conducting a genetic marker analysis within 30 days after receiving the kit. This requirement does not apply to

Also, I have the honor to inform your honorable body that the Assembly on this day adopted Assembly Concurrent Resolution No. 12.

CAROL AIELLO-SALA
Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Assembly Concurrent Resolution No. 12.

Resolution read.

Senator Ford moved the adoption of the resolution.

Resolution adopted.

Resolution ordered transmitted to the Assembly.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, June 5, 2017

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bill No. 554.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolution No. 6.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted the report of the Conference Committee concerning Senate Bill No. 47.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted the report of the Conference Committee concerning Senate Bill No. 69.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted the report of the Conference Committee concerning Senate Bill No. 376.

CAROL AIELLO-SALA
Assistant Chief Clerk of the Assembly

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bills Nos. 47, 49, 69, 72, 74, 106, 120, 121, 124, 132, 144, 146, 155, 167, 178, 187, 192, 200, 203, 209, 212, 213, 225, 229, 235, 246, 249, 257, 258, 259, 286, 300, 303, 306, 325, 344, 355, 361, 368, 373, 376, 377, 390, 391, 392, 402, 427, 428, 432, 442, 443, 444, 445, 451, 457, 458, 464, 467, 478, 482, 487, 488, 490, 492, 492, 497, 498, 500, 503, 511, 514, 522, 527, 528, 529, 530, 531, 532, 536, 537, 538, 539, 540, 541, 543, 546, 548, 549, 550, 551, 552, 553, 554, 555; Senate Joint Resolutions Nos. 6, 14; Senate Joint Resolution No. 17 of the 78th Session; Senate Concurrent Resolution No. 6; Assembly Bills Nos. 21, 23, 25, 29, 45, 49, 52, 69, 80, 94, 97, 110, 122, 127, 130, 144, 175, 183, 205, 206, 207, 249, 259, 267, 280, 290, 291, 309, 326, 328, 339, 348, 359, 362, 371, 375, 382, 388, 395, 397, 399, 403, 405, 407, 408, 413, 417, 420, 421, 422, 423, 434, 436, 454, 468, 472, 475, 484, 486, 487, 489, 491, 493, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 514, 517, 518, 519, 520, 521, 522; Assembly Joint Resolution No. 14; Assembly Concurrent Resolution No. 12.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Parks, the privilege of the floor of the Senate Chamber for this day was extended to Peggy Lear Bowen.

increase must not exceed the amount that the hospital or facility proves is absolutely necessary to avoid an unconstitutional result.

4. The provisions of subsections 1, 2 and 3:

(a) Are self-executing.

(b) May not be waived in any manner or altered or varied by agreement.

(c) May be enforced by:

(1) The State of Nevada or a political subdivision of the State of Nevada.

(2) A civil action brought by a person who is denied any right protected by those provisions.

5. The Legislature:

(a) Shall provide by law for the administration and enforcement of the provisions of this section.

(b) May provide by law for a different rate than the rate provided in paragraph (a) of subsection 2 if the Legislature establishes, by law, a commission to ensure that hospitals and independent facilities for emergency medical care provide medically necessary emergency services at a reasonable cost. If such a commission is established, the Legislature shall provide by law for:

(1) The appointment of the members of the commission; and

(2) The powers and duties of the commission consistent with the provisions of this section.

Senate Joint Resolution No. 17 of the 78th Session—Senators
Roberson, Harris, Farley, Hardy and Settlemeyer

FILE NUMBER 47

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

Under the Nevada Constitution, the Legislature is required to provide by law for certain rights of the victims of crimes, in particular, the right to be informed of the status of criminal proceedings concerning those crimes, the right to be present at public hearings concerning those crimes and the right to be heard at all proceedings for the sentencing or release of persons convicted of those crimes. (Nev. Const. Art. 1, § 8)

This resolution proposes to amend the Nevada Constitution to eliminate the existing provisions of Article 1, section 8, concerning victims' rights and to add a new section that sets forth an expanded list of such rights in the form of a victims' bill of rights. The new section is modeled after the victims' bill of rights set forth in the California Constitution as it was amended in 2008 by what is commonly referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 23, be added to Article 1 of the Nevada Constitution to read as follows:

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family.

(e) To refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(f) To reasonably confer with the prosecuting agency, upon request, regarding the case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing, and at any parole proceeding.

(i) To the timely disposition of the case following the arrest of the defendant.

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(l) To full and timely restitution.

(m) To the prompt return of legal property when no longer needed as evidence.

(n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(o) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

(p) *To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim.*

(q) *To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.*

2. *A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case. The court shall promptly rule on a victim's request. A defendant does not have standing to assert the rights of his or her victim. This section does not alter the powers, duties or responsibilities of a prosecuting attorney. A victim does not have the status of a party in a criminal proceeding.*

3. *Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction.*

4. *A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.*

5. *The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.*

6. *The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.*

7. *As used in this section, "victim" means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.*

And be it further

RESOLVED, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as

in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

2. ~~{The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~5.} No person shall be deprived of life, liberty, or property, without due process of law.~~

~~{6.} 3. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.~~
