

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
May 9, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:12 a.m. on Thursday, May 9, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Nicole J. Cannizzaro, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Assemblyman Alex Assefa, Assembly District No. 42
Assemblywoman Shea Backus, Assembly District No. 37
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblywoman Lisa Krasner, Assembly District No. 26
Assemblyman William McCurdy II, Assembly District No. 6

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Andrea Franko, Committee Secretary

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OTHERS PRESENT:

Bailey Bortolin, Coalition of Legal Service Providers; Southern Nevada Senior Law Program
Holly Welborn, American Civil Liberties Union of Nevada
John T. Jones, Jr., Nevada District Attorneys Association
Will Adler, Scientists for Consumer Safety
Chuck Callaway, Las Vegas Metropolitan Police Department
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender, Washoe County
Megan Rockefeller, Food Bank of Northern Nevada
Jim Hoffman, Nevada Attorneys for Criminal Justice
Shane Piccinini, Human Services Network
Christine Saunders, Progressive Leadership Alliance of Nevada
Corey Solferino, Washoe County Sheriff's Office
Jim Berchtold, Legal Aid Center of Southern Nevada
James M. Humm, Deputy Chief of Staff, Office of the Attorney General
Susan Meuschke, Executive Director, Nevada Coalition to End Domestic and Sexual Violence
Mary-Sarah Kinner, Washoe County Sheriff's Office
A.J. Delap, Las Vegas Metropolitan Police
Marlene Lockard, Nevada Women's Lobby
Mike Cathcart, City of Henderson
Eric Spratley, Nevada Sheriffs' and Chiefs' Association
Jorge Padilla
Jamie Rodriguez, Office of the County Manager, Washoe County

CHAIR Cannizzaro:

I will open the Senate Committee on Judiciary with Assembly Bill (A.B.) 192.

ASSEMBLY BILL 192 (1st Reprint): Establishes a procedure when certain offenses are decriminalized. (BDR 14-319)

ASSEMBLYMAN WILLIAM MCCURDY II (Assembly District No. 6):

In 2016, the voters approved the initiative to regulate and tax marijuana. As a result, on January 1, 2017, the purchase, possession and consumption of recreational marijuana became legal in Nevada ([Exhibit C](#)).

BAILEY BORTOLIN (Coalition of Legal Service Providers):

While working with stakeholders from the legal community, we learned we do not have the technology in our State to expunge criminal records. No one had the budget to take on the burden of going through all of the records to find out who should be triggering the automatic action for record-sealing. We developed a form, and community activists can educate people who feel they qualify. Those who feel they qualify can fill out the form, file it with the court, and the filing of the form will be the triggering action. The burden will be on the person to ask, and we can assist. There is no fee to have records sealed.

The stakeholders agreed we need to request a new information technology system next Legislative Session.

HOLLY WELBORN (American Civil Liberties Union of Nevada):

In California, district attorneys' offices are expunging records to make sure individuals are no longer haunted by prior marijuana convictions. We are not the only State facing technology issues. Vermont has adopted a similar system.

SENATOR HANSEN:

In the last 25 years, incarceration rates increased, yet violent crimes went down. Is that good? The three strikes legislation was to decrease the amount of violent crime by locking up more of the habitual criminals; therefore, we saw a decrease in the rate of crime. Is there a correlation?

ASSEMBLYMAN MCCURDY:

Yes, in the last 25 years violent and property crimes have declined. However, it is not a positive; we had a lack of violent and property crime but an increase in African-American and minority prison population growth. It is not acceptable to have more people incarcerated for nonviolent offenses. This bill will allow us to handle some of the instances differently.

SENATOR HANSEN:

I agree that we should not be incarcerating people for nonviolent crimes. Are the victims and the perpetrators African American?

ASSEMBLYMAN MCCURDY:

Not necessarily. It is important to look at how this impacted the community. We have taken parents away from their homes for nonviolent crimes. Would you

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agree, that a person caught with less than a gram of marijuana three times should not go to prison?

SENATOR HANSEN:

I agree, no one should be incarcerated for nonviolent crimes. It would be interesting to see historical records on people incarcerated during prohibition.

Ms. WELBORN:

We looked back on the repeal of sodomy laws in Nevada in the early 1990s to see how many convictions existed. No processes have been put in place to expunge the records.

There is quite a bit of data from the Crime and Justice Institute. We are incarcerating property crimes at the same high rate although the instances are going down. The significance is we are policing communities of color for lower level nonviolent offenses committed against victims of a variety of racial and ethnic backgrounds. The violations are overenforced in communities of color, and it is the racial connection.

SENATOR HANSEN:

I agree if it is nonviolent. We do not want to say we are incarcerating too many violent offenders. They belong in prison for the health and safety of the community.

ASSEMBLYMAN McCURDY:

We do not want people to get a free pass. The intent of A.B. 192 establishes a procedure for offenses to be decriminalized.

CHAIR CANNIZZARO:

Does the bill address only decriminalized nonviolent crimes?

ASSEMBLYMAN McCURDY:

That is correct.

CHAIR CANNIZZARO:

An individual would make a written request to any court, and it would trigger the sealing process. Is that correct?

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ASSEMBLYMAN McCURDY:

Correct. The bill establishes a process giving the ability to submit the request.

CHAIR CANNZZARO:

If there was an objection to the request, would there be a court hearing?

ASSEMBLYMAN McCURDY:

Yes.

SENATOR HARRIS:

Can you explain why we are pulling traffic offenses?

Ms. BORTOLIN:

It was a discussion in the Assembly. We can have another conversation if and when something changes with traffic offenses, but it is drafted by the Legal Division because traffic offenses are treated differently than the normal records processing.

SENATOR HARRIS:

It would be useful if traffic offenses were decriminalized. It would allow people to have records sealed.

SENATOR SCHEIBLE:

There are number of different statutes criminalizing marijuana. Whenever somebody is charged with a crime in Nevada, the crime carries a Nevada Offense Code (NOC). The NOC pertains to the statute, law or the county code making the act illegal. If you are convicted of possession of marijuana, it is a different NOC from the possession of cocaine. There are over 50 NOCs for marijuana offenses. I do not know which ones would be considered decriminalized. How are you going to handle the volume? I would be available to work with you on looking at NOCs.

Ms. BORTOLIN:

In our stakeholder meeting, we discovered every county prosecuted the NOCs differently. We did not want to tie the specifics into the bill because of the way we have administratively dealt with these offenses in the different counties. The district attorneys felt ten judicial days to process the application was sufficient. Staff will have oversight to ensure the application is appropriate for the expedited process.

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JOHN T. JONES, Jr. (Nevada District Attorneys Association):
I am here in support of A.B. 192. We do have technology constraints. There is a movement to decriminalize all traffic offenses, and we support the movement.

SENATOR HARRIS:
Why is it bad to seal a misdemeanor traffic violation?

MR. JONES:
The spirit behind the traffic law decriminalization is not to wipe the traffic conviction completely from a person's record. We do think it is better treated through a civil context, but for insurance and public records, the traffic information is something we would want to know.

SENATOR HARRIS:
We do not expunge records when we seal records in Nevada. Can you see the records?

MR. JONES:
When records are sealed, law enforcement does not see them.

SENATOR HARRIS:
Is it essential information for law enforcement when investigating?

MR. JONES:
It is important information. We have citizens with three and four traffic citations a year for decades.

SENATOR SCHEIBLE:
If everyone in Clark County with a traffic offense submitted a request to have the record sealed, how many additional law clerks and or district attorneys would be required?

MR. JONES:
It would be significant, although I do not have specific numbers.

SENATOR HANSEN:
Are we sealing all marijuana convictions?

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MR. JONES:
Misdemeanor marijuana convictions will be sealed.

CHAIR CANNIZZARO:
Assembly Bill 192 addresses misdemeanor possession only.

MR. JONES:
That is our understanding also.

WILL ADLER (Scientists for Consumer Safety):
We are in support of A.B. 192.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
We are also in support of A.B. 192.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender,
Clark County):
We support A.B. 192.

KENDRA G. BERTSCHY (Deputy Public Defender, Office of the Public Defender,
Washoe County):
I support A.B. 192.

MEGAN ROCKEFELLER (Food Bank of Northern Nevada):
We support A.B. 192.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):
We support A.B. 192.

SHANE PICCININI (Human Services Network):
We support A.B. 192.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):
We support A.B. 192.

COREY SOLFERINO (Washoe County Sheriff's Office):
We are in full support of A.B. 192.

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CHAIR CANNIZZARO:

We will close the hearing on A.B. 192 and open the hearing on A.B. 299.

ASSEMBLY BILL 299 (1st Reprint): Revises provisions governing certain powers of attorney. (BDR 13-691)

ASSEMBLYWOMAN SHEA BACKUS (Assembly District No. 37):

Jim Berchtold, Legal Aid Center of Southern Nevada, is in Las Vegas and will be covering sections 1 through 4. I will be covering sections 5 through 7 ([Exhibit D](#)).

JIM BERCHTOLD (Legal Aid Center of Southern Nevada):

In guardianship cases, we explore ways to avoid guardianship, or if we are not able to avoid it, we terminate the guardianship as quickly as possible. Guardianship is an invasive mechanism. It can strip away someone's rights and essentially involve the guardian and the court in every aspect of a person's life. The best way to avoid guardianships is powers of attorney. Utilizing powers of attorney, persons can plan in advance for their potential incapacity. They can appoint an agent who would make health care and financial decisions should they become unable to make decisions for themselves. Even with powers of attorney in place, however, there are situations where guardianship may be necessary, specifically to qualify and apply for certain governmental benefits. Ideally, once the purpose is achieved and the benefits are obtained, the guardianship is terminated. Once the guardianship is granted, it terminates all powers of attorney.

Assembly Bill 299 is straightforward. If there are powers of attorney in place, those powers of attorney—once a guardianship is granted—are suspended during the course of guardianship. Once the guardianship is terminated, the powers of attorney again become effective.

ASSEMBLYWOMAN BACKUS:

The second portion of A.B. 299 focuses on the statutory form, durable power of attorney for health care decisions, which is also referred to as an advance directive. The bill revises the form by giving notice to those using the statutory form about Nevada's Secretary of State (SOS) Lockbox; eliminates the need for additional forms, different witnessing and execution requirements for health care decisions; and includes an additional health care decision regarding use of medication.

The proposed amendments to the statutory form are a step to alleviate multiple forms and potential conflicts.

The statutory form would include two notices allowing an electronic copy of the statutory power of attorney for health care decisions stored in the Nevada Lockbox. The Nevada Lockbox is an electronic reproduction of two different registries securely maintained on the Nevada SOS website which contains an electronic production of two different registries: Advance Directive Registry and Guardianship Nomination Registry. The Advance Directive Registry is a simple and direct approach to ensure a person's medical wishes are followed. A person can upload a copy of his or her advance directive, which is kept confidential but is available to the designee of health care decisions and the health care provider. Section 6 amends the definition of "other document" to include power of attorney for health care decisions.

To further eliminate redundancy of additional documents in addition to the durable power of attorney for health care decisions, section 7 includes a durable power of attorney for health decisions which, when it is properly executed, satisfies the requirements under *Nevada Revised Statutes (NRS)*. Without this revision, the mere reference to these provisions essentially requires additional forms be completed.

The last amendment made to the statutory form includes an additional statement for one's health care desires. This addresses the administration of medication likely to cause an addiction or reduce the extension of one's life to alleviate suffering. With concerns over opiate medications and, potentially, the designee's agent's lack of desire to grant permission for the prescription of the same, it is helpful for the agent to understand the designee's desires.

SENATOR PICKARD:

There has been difficulty acquiring medical professionals prescribing opioids. In subsection 6 of the form, found on page 9, have you discussed this with the medical community as to whether the amendment would go against any rules? We do not want to run into any issues expanding the bill.

ASSEMBLYWOMAN BACKUS:

I have not had a discussion with the medical community. This is a standard provision offered in the Southern Nevada Senior Law Program form. The

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program took the provision and made it an addition to the form. The form has been complimented by members in our community.

SENATOR PICKARD:

I want to be sure we do not run into an unforeseen roadblock if the medical community has disciplinary rules preventing the language. Other states have enacted similar bills.

BAILEY BORTOLIN (Southern Nevada Senior Law Program):
We support A.B. 299.

CHAIR CANNIZZARO:

We will close the hearing on A.B. 299 and open the hearing on A.B. 410.

ASSEMBLY BILL 410: Revises provisions relating to orders for protection.
(BDR 3-176)

ASSEMBLYWOMAN LISA KRASNER (Assembly District No. 26):

Assembly Bill 410 relates to orders for protection. Recent statistics show the importance of orders for protection. According to the Centers for Disease Control and Prevention, one in four women and one in seven men will experience severe physical violence by an intimate partner in their lifetimes. In addition, an estimated 9.7 percent of women and 2.3 percent of men have been stalked by an intimate partner. The Nevada Coalition to End Domestic and Sexual Violence reports almost half of women and one-third of men living in Nevada have experienced rape, physical violence or stalking. Domestic violence is defined as a violent crime committed in the context of an intimate relationship; however, domestic violence is no longer a family matter. It is a crime involving the use of power, coercion and violence to control another person. Domestic violence is different from other random crimes because a perpetrator and victim are not strangers. Ongoing domestic violence is characterized by a pattern of escalating abuse in which one partner in the relationship controls the other through force, deprivation or threat of violence. Nevada ranks among the worst states for domestic violence.

Domestic violence and stalking are serious problems in Nevada. The need to have adequate protection for victims is paramount. A temporary protection order (TPO) expires within 30 days unless an application for an extended order is filed within the period of the TPO. If an applicant requests to extend the

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order, he or she must have a hearing. Assembly Bill 410 seeks to extend the initial time in which a TPO is valid from 30 days to 45 days.

SENATOR PICKARD:

We all agree domestic violence is a problem in Nevada. Could you discuss why we need to extend the TPO from 30 to 45 days?

ASSEMBLYWOMAN KRASNER:

Because of the prevalence of domestic violence and aggravated stalking, some courts in Washoe and Clark Counties are already extending the order to 45 days. The bill would allow all the counties to have the discretion to extend the order to 45 days, and it would be in statute.

JAMES M. HUMM (Deputy Chief of Staff, Office of the Attorney General):

Assembly Bill 410 aligns directly with our domestic violence bill package, specifically with A.B. 19 on the enhancements of victim protections. We are in support of A.B. 410 and strongly urge the Committee to pass this measure.

ASSEMBLY BILL 19 (1st Reprint): Revises provisions related to certain temporary and extended orders for protection. (BDR 3-417)

SUSAN MEUSCHKE (Executive Director, Nevada Coalition to End Domestic and Sexual Violence):

We ask you to support A.B. 410. According to the Uniform Crime Reporting 2017 Report issued by the Department of Public Safety, 13,677 TPOs were issued, and only 847 were served on the adverse party.

MARY-SARAH KINNER (Washoe County Sheriff's Office):

We are pleased to support A.B. 410.

A.J. DELAP (Las Vegas Metropolitan Police):

We also support A.B. 410.

MR. JONES:

The Nevada District Attorneys Association is also supporting A.B. 410.

MARLENE LOCKARD (Nevada Women's Lobby):

We are in strong support of A.B. 410.

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Ms. BORTOLIN:

The Coalition of Legal Service Providers supports A.B. 410.

MR. PICCININI:

The Human Services Network supports A.B. 410.

MIKE CATHCART (City of Henderson):

We support A.B. 410.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):

I am in support of A.B. 410.

Ms. BERTSCHY:

The Washoe County Public Defender's Office opposes A.B. 410. There is no justification to extend the TPO an additional 15 days. The purpose of the TPO is to provide the adverse party with notice the party's conduct is inappropriate. The goal is to have the adverse party stop the conduct. A TPO should send the message to stop the inappropriate conduct, so there is not a need for an extension. The bill is starting to strip away the due process rights of an individual. Assembly Bill No.177 of the 79th Session dealt with the service issues to ensure if there was a problem with service, the orders could be extended. I have provided TPO applications ([Exhibit E](#) and [Exhibit F](#)). Temporary protection orders can be used as a sword and a shield. If someone is not asking for the extended protective order, the additional time does make a difference. Someone may not be able to see his or her children for an additional 15 days.

SENATOR PICKARD:

We are talking about the TPOs, not the extended orders. I am the first one to complain about the tactical advantage in a divorce case where parties are trying to gain custody. We are talking about the effectiveness of the TPO. Are you suggesting an additional 15 days is different from the deprivation of rights—I am thinking of access to children?

Ms. BERTSCHY:

Yes. I am concerned it is 15 days this Session, 15 days next Session. We are chipping away at due process rights.

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SENATOR PICKARD:

If the courts are not getting to the extensions in the 30-day time frame, this order terminates at 30 days before they have had a chance to get to the extension order. Would it put the victim at risk?

MS. BERTSCHY:

I am unsure from your questions about the risk factor of the victim. The adverse party is served, and the paperwork has a court date. The adverse party knows there is a neutral party accessing his or her side of the story and will make a decision.

SENATOR PICKARD:

If the TPO expires by its own terms of 30 days because of court congestion and there is not a hearing within the 30 days, then the TPO order expires prior to the extension order hearing. Since it is expired unless the court orders an extension to the protection order, it cannot be enforced. Am I correct?

MS. BERTSCHY:

It is in the TPO. It remains in effect until the hearing, regardless of the 30 days.

SENATOR PICKARD:

This bill gives the courts statutory authority to extend the order that the courts do not have currently.

SENATOR HAMMOND:

I heard testimony stating over half the women in Nevada have been sexually abused and/or raped? It is a huge problem. Where did the statistics come from? Can you qualify the statistics about sexual abuse?

ASSEMBLYWOMAN KRASNER:

The statistics came from the Nevada Coalition to End Domestic and Sexual Violence and the Centers for Disease Control and Prevention.

SENATOR HAMMOND:

Can you qualify the numbers?

ASSEMBLYWOMAN KRASNER:

I will be happy to give you the details after the hearing.

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CHAIR CANNIZZARO:

We will close the hearing on A.B. 410 and open the hearing on A.B. 315.

ASSEMBLY BILL 315 (1st Reprint): Requires the expungement of all records relating to the wrongful arrest of a person in certain circumstances. (BDR 14-831)

ASSEMBLYMAN ALEX ASSEFA (Assembly District No. 42):

Assembly Bill 315 authorizes a person who was wrongfully arrested to submit to a court an application to expunge all records relating to the arrest. If a person was determined to have been wrongfully arrested, the person may submit a single-page application to expunge all records relating to the arrest. Upon receiving an application, the court shall verify with the law enforcement agency or the prosecuting attorney for the person wrongfully arrested. Upon receiving verification, the court shall issue an order to expunge all records relating to the arrest.

JORGE PADILLA:

Charles Belk is an African-American television producer who was wrongfully arrested in Beverly Hills in 2014. Nearby there was a bank robbery, and the police officers had released a profile fitting the description of Mr. Belk. He was surrounded by six police officers, handcuffed and searched for weapons. Within an hour, he was transported to police headquarters, photographed, fingerprinted, placed under \$100,000 bail and accused of armed robbery and accessory to robbery.

After six hours of looking at footage from the bank robbery, the police realized Mr. Belk did not rob the bank and was wrongfully arrested.

Following provisions in section 2, subsection 1 of A.B. 315, Mr. Belk would have the opportunity to apply to have his record expunged.

Assembly Bill 315 relates to employment. A criminal record can impact an innocent person's ability to get a job, a loan, a gun permit, a teaching license or a host of other items.

CHAIR CANNIZZARO:

What is the definition of "wrongfully arrested"?

ASSEMBLYMAN ASSEFA:

The person arrested is not the correct person sought by law enforcement.

CHAIR CANNIZZARO:

I can see where it fits the definition. I am concerned that without similar clarification if a person goes to trial and is found not guilty, does it constitute a wrongful arrest? What happens if a case is negotiated as part of that case and dismissed? It is a lot to expunge all documents and records in 30 days. In your example, would the video surveillance be expunged?

ASSEMBLYMAN ASSEFA:

If someone is adjudicated, taken to court and adjudicated, it does not fall under the intent of the bill. The 30-day time period is for the expungement of records after the court has ordered the expungement.

CHAIR CANNIZZARO:

A mug shot, a booking photo, fingerprints or biological evidence taken by law enforcement for the purpose of identifying and booking an individual is one piece of evidence, but the language in the bill encompasses a public or private agency, a company or other custodian of records, and it includes all of those different individuals who might have records on arrest. It can include someone talking on the scene if arrested in a casino. If we are defending a case and it constitutes exculpatory information, law enforcement must turn the evidence over—but it has been destroyed. If we destroy everything in 30 days, we may be destroying evidence.

Since there are other ways of sealing records, how does it apply in this case and how is this different?

ASSEMBLYMAN ASSEFA:

I am committed to work on the language prior to the work session. Sealed records are not destroyed, they are available and accessible for certain individuals. We are calling for the arrest records of innocent people. We should never have had the records. We are asking for the suppression of records; we are asking to destroy the records.

CHAIR CANNIZZARO:

If we move forward with this bill, there is clarity on what it is we are destroying and to what extent it would be available, for example, in the context of a trial

for exculpatory evidence and production burdens on the part of prosecution and law enforcement and also access for the defense in the event of a case.

SENATOR SCHEIBLE:

I want to start with something conceptual about this. I had a case last year where two individuals robbed someone and drove away in a red Camaro. Ten minutes later, somebody was pulled over about eight miles from the crime scene. It was not the right person. The police let him go. When we got to the discovery phase of the trial, I had a huge argument with the defense counsel because they wanted the name and license plate of the person pulled over. The defense attorneys felt it was exculpatory to their client. I asked if we had the person's name. It was my obligation as a prosecutor to get them to retrieve the record, find the field interview card and give me the name of the person they stopped even though he was not arrested. It was the right of the defense to have the name so they could investigate because they had a legitimate interest in proving this other person was actually the criminal mastermind who had convinced the police he was not the person who got away. Ultimately, they could not put the story together, but if I had not turned over this evidence, then they would not have had the full information to follow the lead. Will there be adequate protections in the bill to allow defense attorneys, prosecutors and police officers to follow leads?

ASSEMBLYMAN ASSEFA:

Your concerns mirror Chair Cannizzaro's concerns. We will clarify the language before we go to the work session.

SENATOR SCHEIBLE:

How will it be clarified?

ASSEMBLYMAN ASSEFA:

The spirit of the law is to destroy records pertaining to an arrest of innocent individuals. They were never involved in a crime, and we should never have had the information. I commit to you and the Committee, I will sit down with the interested parties to figure how we navigate relevant information.

The gentlemen in the red Camaro is a part of the whole picture now. How do we protect his innocence, if he was indeed innocent, and how do we make it available for exculpatory reasons? An innocent person should not have a record in the criminal justice system.

SENATOR SCHEIBLE:

I also wonder about the term "wrongfully arrested." If someone is arrested without probable cause, it is unlawful and unconstitutional, and there is a process for the person to fight the charges and arrest. There is not a process to expunge the arrest for the reasons I explained. Are you creating a new legal concept of an arrest based on mistaken identity? Mistaken identity does not fall within our legal definition of what would be an unconstitutional or unlawful arrest because you can have probable cause to arrest somebody. Probable cause is based on the belief the person did the crime given sufficient evidence. Descriptors of a person, although they can lead to the wrong person, and misidentifications by witnesses can lead to the wrong person, but it does not mean there was not probable cause for the arrest. Are we creating a lower threshold than probable cause for an arrest to be upheld in court?

ASSEMBLYMAN ASSEFA:

I assume if there was probable cause, there will be a court case associated to the suspect.

SENATOR SCHEIBLE:

There has to be probable cause for anyone to be arrested. After persons are arrested, if it is discovered they did not commit the crime, charges will never be filed and the persons are released.

ASSEMBLYMAN ASSEFA:

If a person was totally and absolutely innocent although we did have probable cause to arrest him or her and later figured it was the wrong person, we should have no record of the person. Does it fall in the current definition? If not, then we are creating a new definition.

SENATOR SCHEIBLE:

I know I am being tough on you, and I do appreciate the purpose of this. I have encountered individuals whose lives have been turned upside down by wrongful arrests. Those arrests can follow them for decades, especially for people arrested on murder charges who ultimately are not the correct person. I want to find a way to successfully address these questions. Have you vetted this with constitutional scholars or worked with some legal counsel who deal with appellate criminal issues to try to find the right mechanism?

ASSEMBLYMAN ASSEFA:

Several parties have been involved in these conversations in the past couple of months to carefully vet the bill before we developed the language. Obviously, we have work to do. Constitutional scholars were not involved. If they are around, I would love to talk to them and perfect this bill.

SENATOR OHRENSCHALL:

As a new attorney, I had a case where we used bait cars to catch car thieves. The cars are wired with audio and video, so if a thief attempts to steal the car or something in the car, there will be evidence to prosecute the person. My client was arrested based on the picture of his face. He said he was not guilty and we played the video. It looked a lot like him. The gentleman in the video attempting to steal the car was wearing a muscle shirt leaving his arms exposed and visible. The arms of the gentleman in the video were white with no scars and no tattoos. My client rolled up his sleeves and both his arms were tattooed. The Las Vegas Metropolitan Police Department looked at the video, and the man in the video looked similar.

In other states, it is easier to have records sealed or expunged than the process is in Nevada. Is the intent of your bill to get a process less cumbersome?

ASSEMBLYMAN ASSEFA:

We are trying to make it easier for innocent people to put the experiences behind them and move on with their lives. We have seen some of the records are discoverable. People answer questions on employment applications correctly. They answer they were not arrested or convicted of a crime and the discovery of this information makes them look like they have lied on the application. It then prevents them from being gainfully employed. To help with the process, I came up with a one-page application because, as you are aware, our criminal justice system is reactive, not proactive, in removing records.

MR. JONES:

The Nevada District Attorneys Association supports A.B. 315. We agree we need some exceptions for exculpatory in future cases arising out of the same facts and circumstances. The district attorney or law enforcement officer must sign off on the petition in order for the record to be expunged.

CHAIR CANNIZZARO:

I do not see in the bill where someone must agree.

MR. JONES:

Section 2, subsection 3 states "Upon receiving an application pursuant to this section, the court shall verify with the law enforcement agency that arrested the person or the prosecuting attorney that the person was wrongfully arrested." They have to verify the person was wrongfully arrested. I read the bill to say we have to agree with the person filing the petition in order for them to avail themselves of the new statutory scheme.

MR. PIRO:

The Clark County Public Defender's Office supports A.B. 315. We understand the intent of the bill.

MS. WELBORN:

The American Civil Liberties Union of Nevada also supports A.B. 315. California recently passed similar legislation. The legislation had a variety of exceptions, and exculpatory evidence was one of the exceptions.

MS. BERTSCHY:

The Washoe County Public Defender's Office supports A.B. 315. As we heard in the example from Mr. Padilla, the bill is important for individuals wrongfully arrested.

CHAIR CANNIZZARO:

We will close the hearing on A.B. 315 and open the hearing on A.B. 301.

[ASSEMBLY BILL 301 \(1st Reprint\)](#): Revises provisions relating to jails. (BDR 16-769)

ASSEMBLYWOMAN TERESA BENITEZ-THOMPSON (Assembly District No. 27):

We are trying to accomplish two goals with this bill. We are looking for transparency and notification. We would like hardier conversations around jail death in our local communities, and we are looking to empower the boards of county commissioners. We want our commissioners to have better information as they are discussing jail death. The statute does two different things. Law requires each board of county commissioners to: at least once every three months, inquire into the security of the county jail and the treatment and condition of the prisoners; and take all necessary precautions against escape, sickness and infection in the county jail under NRS 211.020. The law also gives the sheriff the responsibility for the daily operation of the county jail in

NRS 211.030. The sheriffs are the keepers of the prisoners and are to be paid and receive adequate compensation from the county commissions for their services. We have responsibilities delegated between the county commission and the county sheriff. This statute has been in place for many years. It does not address local jails. Section 3 of the bill adds the language referencing the counties moving jurisdiction to the local city jail and all associated responsibilities to cities.

Over the biennium, we had reporting of jail deaths specific to Washoe County. We reported what was happening in jail deaths and what the trends were and there has been a spike in suicide. Through the course of the investigation, we found two things. First, the language in place for commissioners to check on the well-being of the offenders every three months was not happening. Second, there is nothing defining what information should be shared and we would like the statute to clarify the process.

Section 6 is amending NRS 211.030, which talks about the obligation of the sheriff. The Department of Justice released the Report of the Attorney General to Congress Pursuant to The Death in Custody Reporting Act of 2013 ([Exhibit G](#)) that contains examples of the types of data and the reporting schedule. The intent of the Department of Justice is to aggregate the data and come back to states with best practices. We are three to five years away from knowing what the mandates will be.

The information our county jails collect is to be shared with the county commissioners and the information collected by our local jails with the city councils. The sheriff shall submit to the board of county commissioners a biannual report containing aggregated data similar to the information submitted pursuant to The Death in Custody Reporting Act of 2013.

We want the data to get to the local governments overseeing the inmates in jails. The Washoe County Sheriff's Office released a Technical Assistance Report ([Exhibit H](#)) compiled by a third-party review team.

When there is a death in a jail, it is shared with the local governing body within 48 hours. The Nevada Department of Corrections immediately sends a press-release with demographic information on the inmate who has passed away. Different counties share the information in different ways and some

counties were not sharing the information at all. The details on the death and the demographics needed are in section 2.

Section 5 deals with the responsibilities of the county commissioners. In section 5, subsection 3, we are adding suicide and death. We want the counties to take the necessary precautions not only for escapes, sickness and infection but suicide and death as well. We are keeping the three-month reporting requirement into the security of the jail and condition of the prisoners. The commissioners must have the report on the agenda for a public meeting twice each year.

Section 3 is taking all of the prescriptive language we have for counties and applying the language to cities.

I have a proposed amendment ([Exhibit I](#)). In NRS 211.140, subsection 8, the language is specific to Clark County. Some areas have better wraparound services to support offenders. Clark County has been successful in coordinating with the Department of Health and Human Services (DHHS). We want to ensure we make the connection between local jails and DHHS. I would like to take the population cap out of the bill and see the practices applied elsewhere in the State.

SENATOR SCHIEBLE:

Is this a conceptual amendment?

ASSEMBLYWOMAN BENITEZ-THOMPSON:

Yes. I am having Nicolas Anthony format the amendment.

SENATOR SCHEIBLE:

You are removing the population cap, not changing it.

ASSEMBLYWOMAN BENITEZ-THOMPSON:

That is correct.

MR. SPRATLEY:

Nevada Sheriff's and Chiefs' Association is here in support of A.B. 301 and the amendment.

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MR. SOLFERINO:

Washoe County Sheriff's Office is supporting A.B. 301. We have taken a progressive approach as some of the deaths are from our jail, and we learn from our mistakes.

JAMIE RODRIGEZ (Office of the County Manager, Washoe County):

We are supportive of A.B. 301, particularly section 6 which requires the sheriff to notify the board of county commissioners within 48 hours. Washoe County Sheriff Darin Balaam notified the Board of Washoe County Commissioners within a few hours of the events.

MR. HOFFMAN:

Nevada Attorneys for Criminal Justice supports A.B. 301.

MS. WELBORN:

American Civil Liberties Union of Nevada supports A.B. 301.

MS. BERTSCHY:

The Washoe County Public Defender's Office supports A.B. 301.

Mr. Piro:

The Clark County Public Defender's Office is in full support of A.B. 301.

MR. DELAP:

The Las Vegas Metropolitan Police supports A.B. 301.

ASSEMBLYWOMAN BENITEZ-THOMPSON:

There is change coming, and we will ensure best practices are cemented in law.

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CHAIR CANNIZZARO:

Since we have no further business, I will close the Senate Committee on Judiciary at 10:19 a.m.

RESPECTFULLY SUBMITTED:

Andrea Franko,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	6		Attendance Roster
A.B. 192	C	5	Assemblyman William McCurdy II	Testimony
A.B. 299	D	3	Assemblywoman Shea Backus	Testimony
A.B. 410	E	23	Kendra G. Bertschy / Office of the Public Defender, Washoe County	Temporary Protection Order
A.B. 410	F	7	Kendra G. Bertschy / Office of the Public Defender, Washoe County	Application for Order for Protection
A.B. 301	G	12	Assemblywoman Teresa Benitez-Thompson	AG Report Pursuant to The Death in Custody Reporting Act
A.B. 301	H	21	Assemblywoman Teresa Benitez-Thompson	Technical Assistance Report
A.B. 301	I	2	Assemblywoman Teresa Benitez-Thompson	Proposed Amendment