

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eighty-Second Session
March 30, 2023**

The Committee on Judiciary was called to order by Chair Brittney Miller at 8 a.m. on Thursday, March 30, 2023, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Brittney Miller, Chair
Assemblywoman Elaine Marzola, Vice Chair
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Venicia Considine
Assemblywoman Danielle Gallant
Assemblyman Ken Gray
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Selena La Rue Hatch
Assemblywoman Erica Mosca
Assemblywoman Sabra Newby
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Toby Yurek

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Tracy Brown-May, Assembly District No. 42

Minutes ID: 585



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Devon Kajatt, Committee Manager
Garrett Tamagni, Committee Secretary
Ashley Torres, Committee Assistant

OTHERS PRESENT:

Ashley Garza Kennedy, Principal Management Analyst, Government Affairs,
Department of Administrative Services, Clark County
Mike Thiele, Traffic Intervention Officer, Las Vegas Metropolitan Police Department
Daryl Rhoads, Lieutenant, Traffic Bureau, Las Vegas Metropolitan Police
Department
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County
District Attorney's Office; and representing Nevada District Attorneys
Association
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public
Defender's Office
Jason Walker, Sergeant, Administrative Division, Legislative Liaison, Washoe
County Sheriff's Office
Mike Cathcart, Business Operations Manager, Finance Department, City of
Henderson
Zach Bucher, Government Affairs Officer, Government and Community Affairs, City
of Las Vegas
Nic Ciccone, Legislative Relations Program Manager, City of Reno
Greg Herrera, representing Nevada Sheriffs' and Chiefs' Association
Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County
Public Defender's Office
Ryan Edwards, Private Citizen, Las Vegas, Nevada
Shaelyn Dieter, Private Citizen, Las Vegas, Nevada
Eve Hanan, Associate Professor of Law, William S. Boyd School of Law, University
of Nevada, Las Vegas
Patricia R. Lenzi, Chief Judge, Winnemucca Indian Colony
Nick Shepack, Nevada State Deputy Director, Fines and Fees Justice Center
Leisa Moseley-Sayles, Nevada State Director, Fines and Fees Justice Center
Wiz Rouzard, Deputy State Director, Americans for Prosperity-Nevada
Lilith Baran, Policy Manager, American Civil Liberties Union of Nevada
Maria-Teresa Liebermann-Parraga, Deputy Director, Battle Born Progress
Patricia Melynkov Ackerman, Private Citizen, Minden, Nevada
Jodi Hocking, Founder/Executive Director, Return Strong!; and Private Citizen,
Carson City, Nevada
Jeffrey S. Rogan, representing Clark County

Chair Miller:

[Roll was called. Rules and protocol of the Committee were reviewed.] We have two bills today and we are going to take them out of order. We will first hear Assembly Bill 408. Assembly Bill 408 is sponsored by Assemblywoman Brown-May, and there will be a number of copresenters that I will let the Assemblywoman introduce. This measure revises provisions related to reckless driving.

Assembly Bill 408: Revises provisions relating to reckless driving. (BDR 43-95)

Assemblywoman Tracy Brown-May, Assembly District No. 42:

Assembly Bill 408 revises the provisions relating to reckless driving. This bill is the result of many conversations throughout the interim and is meant to address safety on our roads and in our communities. From my home, late at night, I can hear cars and motorcycles racing up and down Spring Mountain, burning rubber; you smell it in our neighborhood. You know there is some reckless or unsafe driving that is happening in our neighborhoods. When I started to ask questions, I found that is referred to as "trick driving." Trick driving is a growing concern in many of our communities.

As I started to research this bill, I found that we had a great interest from Reno, Sparks, Henderson, Las Vegas, and Clark County. There are a number of provisions that are being put into place in order to decrease trick driving. One of them is this provision that we are going to talk about today. This morning, you are going to hear from the experts who work on this issue daily. I have had the opportunity to view video that has been supplied from some of our traffic cameras of the instances that actually happened and the injuries that resulted from bystanders or other people who were watching these activities.

This morning I am going to introduce you to Ms. Garza Kennedy with Clark County, who has been doing a lot of work on this bill, as well as our traffic intervention officer, Mr. Thiele, who is in Las Vegas. The team from the Las Vegas Metropolitan Police Department (Metro) is here as well. We have plenty of people on hand to help walk through this issue and to answer all of your questions. You are probably also going to hear from the Office of the Public Defender later today, as we continue to work on these conversations to make sure that our fines are not onerous, as we tow vehicles, and as we talk about tow without arrest. This is about increasing the safety on our streets while we are stopping the behavior from happening. With that, I am going to turn this over to Ms. Garza Kennedy. I want to thank you for the opportunity to present this bill.

**Ashley Garza Kennedy, Principal Management Analyst, Government Affairs,
Department of Administrative Services, Clark County:**

I want to thank Assemblywoman Brown-May for her willingness to carry this bill. Clark County has seen a rise in trick driving displays across the valley, and I know my colleagues here in Reno can also attest to the same challenges. Clark County Commissioner Marilyn Kirkpatrick attended a ride-along last year and witnessed firsthand the gravity of these displays and the impact they have on our roadways and our traffic safety. Our board felt strongly that we needed more mechanisms to prevent trick driving. For clarification

purposes, trick driving is defined in *Nevada Revised Statutes* (NRS) 484B.653. It means using a vehicle to perform tricks, stunts, or other maneuvers on a public highway upon which traffic has been diverted, slowed, impeded, or blocked. Before we walk through the provisions of the bill, I would like to pass the presentation over to Officer Thiele and Lieutenant Rhoads, who are joining us from Las Vegas. Officer Thiele and Lieutenant Rhoads are with the Traffic Bureau of Metro, and I would like them to talk about their experiences in the community.

Mike Thiele, Traffic Intervention Officer, Las Vegas Metropolitan Police Department:

I am joined here today by Lieutenant Darryl Rhoads and Mr. Bennett, the director of Clark County Office of Traffic Safety and chairman of the Nevada Advisory Committee on Traffic Safety. At the beginning of this pandemic, we quickly saw a deadly rise in reckless driving, trick driving, and speed contests on our public roadways. As a result, Metro formed a specific team to identify and apprehend the drivers participating in these prohibited activities. These activities draw a very large crowd. These are not kids there just to have fun. We have recovered several firearms, at least four in this last week. We have had people hanging outside the windows of their vehicles, their driver's door is open, and they are holding it while they are performing their tricks. This is a danger to the public and the crowd that has gathered, and it commonly results in injuries. We had a double fatal at Jones Boulevard and Flamingo Road from two vehicles that were racing on our streets and endangering the public.

I want to thank Assemblywoman Brown-May for sponsoring this legislation and allowing us to present to the Committee. I will now pass the presentation back to Ms. Kennedy who will go through the provisions of this bill.

Ashley Kennedy:

Section 1 expands the circumstances in which a law enforcement officer may remove the vehicle from the highway to include if someone has been issued a citation for reckless driving. Currently, the options that we have to address reckless driving include: a verbal warning, a written warning, a misdemeanor traffic citation, or arrest in which the car will be impounded. We believe that allowing us to issue a citation and tow a vehicle will allow us to remove the vehicle from the road but avoid unnecessarily arresting the driver. We have seen circumstances where a traffic citation is issued and the driver continues to participate in trick driving later that evening.

Section 2, subsections 1(d) and (e) expand the definition of what constitutes reckless driving as defined in NRS 484B.653 to include premises the public has access to. We have seen a rise in instances where trick driving is taking place on privately owned roads or warehouses which has limited our enforcement capabilities. This language will allow us to stop trick driving displays in areas that may be on private property but are publicly accessible.

Finally, section 3, subsection 3 relates to circumstances in which a vehicle can be released after being connected to a tow car but not yet taken to a tow lot or garage. This section ensures that someone cannot have their car released under these circumstances if the tow was requested by law enforcement. That concludes the presentation, and we are happy to stand for questions.

Assemblywoman Cohen:

My first question is not about the bill. We have dealt with trick driving before in this Committee, and I seem to remember that there was something that Metro was doing with having some nights where they had events so that people could come and do trick driving and drag racing at the events. Is that still happening, and did that help?

Daryl Rhoads, Lieutenant, Traffic Bureau, Las Vegas Metropolitan Police Department:

There are events that continue to happen out at the speedway allowing those who want to legally participate in these types of events to go out there and have a good time. The problem that we are seeing is these trick drivers and these intersection takeovers are filled with people who do not want to be a part of those legal events. These are vehicles that have been modified, they are illegal for the roadway, and they do not qualify for these events that are out there. Part of the thrill of what they are involved in is taking over these intersections, creating dangerous situations, and they simply do not want to be a part of these events. The venues are out there and are open and available. They just do not take advantage of them. They still want to go out and be a part of this illegal activity and dangerous takeovers.

Assemblywoman Cohen:

My question about the bill is in section 1, subsection 3(c). I understand that is so the tow is being allowed if the person driving is issued the citation for reckless driving. That is when a tow can occur. But in section 1, subsection 3(b), which is existing language, it says if the person who is driving is arrested. If there is someone else in the vehicle, is he allowed to take the vehicle? If you are driving and you are arrested, is there an automatic tow, or can your friend take the car? If there is someone nearby, can he take the car for you?

Mike Thiele:

When a person is arrested or the vehicle is getting towed, in order for us to release the vehicle to a person, it has to be the registered owner. If the registered owner is the person that is either being arrested or cited, the vehicle is still towed at that point.

Assemblywoman Considine:

I think my question was somewhat answered. I just want some clarification. I am trying to go through the NRS to connect the changes in section 3, subsection 3, as far as the owner being able to get the vehicle back. I know there are a lot of trick cars, so the assumption is that the owner has tricked-out the car. If the owner is not the person who was arrested or cited for driving the car, and the car is then towed, I think I am confused about who can go get that car, or if that car is held, how long is the car held?

Ashley Kennedy:

If you are issued a citation and your car is towed, you can immediately get the car as soon as the citation has been completed by the officer. I will turn it back over to the officers in Las Vegas regarding your other question, which was related to if the car was impounded but it was not the owner that was driving the vehicle.

Assemblyman Gray:

When you said it had to be released back to the registered owner, is that specific to this case? If somebody is arrested for a driving under the influence or driving without a license, a lot of times the officer's discretion allows them to release the vehicle to somebody that the registered owner has called, such as a family member. I am just wondering if that is specific to this legislation.

Mike Thiele:

Per our policy, we can only release the vehicle to a registered owner who has papers that show he owns the vehicle.

Assemblywoman Hansen:

My question relates to section 2, subsection 1(d). If I could just understand "or premises to which the public has access." You are looking for some authorization, maybe to go on some private property, but that the public has access to. I think I know what it means, but could you paint a picture of what kind of circumstances you are seeing this happen in perhaps, or could happen in the future?

Ashley Kennedy:

From my understanding, one of the issues is trick driving displays happening in a warehouse area, where it is private property and law enforcement cannot actually go there to issue any type of citation or arrest. However, getting to that warehouse is a public road. I will defer back to the officers for further clarification.

Mike Thiele:

That is correct. In January of 2022, we had a very large trick driving event that took place in a warehouse that was currently under construction. During that time, we had several vehicles inside the warehouse that were performing their tricks. One of the vehicles actually hit a structural pole that, we were told, had it been knocked three more inches to the left, the entire roof would have collapsed on the racers who were inside performing their tricks. Due to it being on private property, it was very hard for us to enforce this type of event, and the public did have access to it.

Assemblywoman Hansen:

It was inside a warehouse. We have a business in what we call "condo warehousing," which have parking lots. Some of these parking lots are really big. Do you already have the ability to go on parking lots for private businesses, because the parking lots are for the public? The example you talked about was specifically inside the building, but you already have the access to parking lots. Is this happening for private businesses that have public parking lots?

Mike Thiele:

We have both. These people go to the larger warehouse areas for exactly what you just said. The parking lots are large, and they are able to go there and perform their tricks. We have warehouses off of Valley View Boulevard and Russell Road; we are consistently getting calls about the trick drivers who show up to take over the parking lots of their businesses as well. This change will help enforce both of those.

Assemblywoman Mosca:

I know there are a lot of stereotypes when it comes to trick driving. Do we have demographics on who is arrested when it comes to trick driving?

Ashley Kennedy:

I do not have that information. I do not know if the officers in Las Vegas have that on hand. If not, we are happy to report back.

Assemblywoman Hardy:

This bill applies to trick driving. Would it also apply to instances of street racing or anything in that realm?

Mike Thiele:

This would apply to reckless driving, trick driving, and aggressive driving. It is all within the same law in this bill.

Assemblywoman Hardy:

I am just curious, we have talked about the registered owner, and when the car gets towed, he can go get the vehicle. You mentioned that a lot of the vehicles are illegal to be on the roads. What happens when the registered owner gets his car back, and he could go do this again and get another citation? Is there anything done to the vehicle itself, since it is illegal to be driving it in the first place?

Daryl Rhoads:

Currently, when a vehicle gets towed to the tow company's business, they are responsible to do the release of that vehicle. Also, one extra part of this is, we have teamed up with the Department of Motor Vehicles. If a vehicle is deemed to be unsafe, we can refer them to their investigators as well to take a look at that vehicle and make sure that any illegal modifications that are unsafe for the roadway are reversed on that vehicle.

Assemblywoman La Rue Hatch:

This is an issue in my neighborhood. There is a lot of racing and trick driving that happens in our neighborhood, and I appreciate the attempt to address it. It looks like the main change here is that now we can take the vehicle if they are doing this, and that should be a deterrent. In my neighborhood, sometimes police come and they will watch for a little while. There is a main drag in my neighborhood where people go, and the police will watch for a little while

and issue some citations. It will stop for a week and then they come right back, the police are not there, and it continues. I would like to know how this new mechanism helps discourage that. Also do you have the manpower to effectively make a change in this space?

Ashley Kennedy:

We find this as another solution or another step. Rather than arresting someone and towing a vehicle, we can issue a citation and tow the vehicle. It is just another option for us. I will say, if you are issued a citation and your car is impounded, you can go pick up your car later that night. Theoretically, yes, you could go and do trick driving again next week. As far as deterrents, actually just this week, Clark County, in collaboration with Metro, installed what are called "safety transverse rumble strips" on the intersection of U.S. Route 93 and Grand Valley Parkway in Clark County. When you are going through an intersection as you should be, there is no damage to any cars from these rumble strips. However, if you are doing donuts in an intersection, they could damage your vehicle. There was an incident in this particular intersection that was being taken over, and we had truck drivers who were having trouble delivering fuel into Las Vegas. Just this week we were able to install those rumble strips. We are trying to also come up with other ways to address this issue. As far as the manpower, I will defer back to the officers in Las Vegas.

Daryl Rhoads:

As far as manpower, it is about educating our own officers on the things that we can do in response to these takeovers. Obviously, we are in a city of over two million people. Some of these trick drivers are committed to continuing this activity. We want to continue to add tools we can use to combat this illegal activity in our community and continue to try to make it safe. Being able to cite and tow is going to be a huge deterrent for some of these people because they realize they could temporarily lose their vehicle. I think it is another part that we can deter or make it so that they do not want to participate in this activity anymore. This is another tool in the toolbox.

Assemblywoman Summers-Armstrong:

I am a little stuck on the ability for you to access private property. I am stuck on that because I am going to guess that a lot of this activity happens after hours, and I am concerned about opening up a Pandora's box of allowing you to enter private property without permission from the property owner. I understand this is a real issue, but I think we have to be careful of what the exponential result could be down the line. Today you are going after trick drivers, next week it could be something else, next year it could be something else. Then, all of a sudden you are entering private property whenever you feel like it, warrantless. I am concerned about that. Can you please speak to that?

Ashley Kennedy:

Thank you for your question, and I understand your concerns. I had a friend of mine pass me NRS 484A.185, which defines "Premises to which the public has access." I will say, and you will hear later in testimony from our District Attorneys Association, on why we needed this change to help us. I will just read from NRS 484A.185, "'Premises to which the public has access' means property in private or public ownership onto which members of the public

regularly enter, are reasonably likely to enter, or are invited or permitted to enter as invitees or licensees, whether or not access to the property by some members of the public is restricted or controlled by a person or a device." I will say there are limitations. It does not include a private way on a farm or a driveway of an individual dwelling.

Assemblywoman Summers-Armstrong:

If you are phoning a friend, maybe he can answer this part too. The officers gave the example of the trick driving happening inside of a building. Under the amendment that you want, we are not talking the driveway, we are not talking the parking lot, we are talking inside a structure. So where does it end? What is the cut off here, if now you want to make an amendment so that you can go inside private property?

Ashley Kennedy:

I will defer to our officers in Las Vegas, but in section 2, where we are talking about the premises to which the public has access to, that is defined in statute. The term includes but is not limited to a parking deck, parking garage, or other parking structure; a paved or unpaved parking lot; a way that provides access to a place of business, a government building, apartment building, mobile home, et cetera. I would think the intent is not to go inside the building, but if they were in the parking lot, this would be covered. As far as if the warehouse is privately owned and we receive a call, at that point, I think there is a course of action.

Mike Thiele:

We did receive a phone call from the warehouse owner. The owners of this warehouse had several warehouses where these trick driving events happened. Before any enforcement action was taken, we made sure that they did not have permission to be there. There was approximately \$70,000 worth of damage done to a warehouse that they did not have permission to be at. The provisions of this bill are for us to be able to go after private property that has access to the public.

Chair Miller:

To follow up on that, you are saying in that specific instance, the owner of the property gave you permission to enter.

Mike Thiele:

That is correct. When we knew that had happened, we made contact with the owners, and they were the ones who wanted enforcement action taken.

Chair Miller:

Thank you for that. I just want to make sure what I think is trying to be explained. You are talking about private property with access to the public, and I am thinking of a Target's parking lot. That is private property, but the public has access to it—as opposed to our personal residential dwellings, which would not be defined by a driveway, because not

everyone has a driveway. It could be an apartment complex, a multidwelling home, a loft above a store, whatever, but a personal residence. Mr. Jones, can you define? I think that is where we are getting caught up, so could you just define that for us?

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:

I think you said it rather well in your explanation. This is directed at parking lots and things of that nature. I do want to note that when you read on page 4 of the bill, lines 1 through 11, this language is already in the reckless driving statute. If you drive with "willful or wanton disregard" on a premises to which the public has access, that is already a violation of law. If you engage "in an unauthorized speed contest on . . . premises to which the public has access," that is currently a violation of state law. All this bill is seeking to do is to treat trick driving the same way that we treat unauthorized speed contests and driving with willful or wanton disregard. In terms of the locations, Chair Miller, I think you did a great job of explaining. We are talking about parking lots and things of that nature.

Chair Miller:

Thank you. Can you give us an example of when we know that a search warrant would be necessary? When would we be crossing into that space where we would need a search warrant; that we would be restricted from entering the property, whether it is inside or outside?

John Jones:

That is going to be very fact-specific. Let us take the scenario given in the warehouse and let us say the owner did not call, but an officer drives by, the warehouse garage doors are all open, and the officer can plainly see that there is trick driving going on. If the officer can articulate that the people who are observing the trick driving display are in imminent danger of potentially being hit by the cars or something like that, I think they could enter with a verified exigency. In other words, there is an emergency going on in there that the officer needs to control, where somebody is going to get hurt. I would also like to point out that if the individuals inside are not the owner and not the lessee, or they do not have any legal right to be there, they would not have standing to assert the Fourth Amendment violation by the officers; only the owner of the property could do that. It is very complicated when you are talking about the Fourth Amendment with respect to these types of situations.

Chair Miller:

Would that be the only scenario? Let us take it outside of a warehouse and a structural building. What if it is just an open field? Technically, someone has a claim to all the land here. Let us talk about an open field where the owner is not obvious, compared to an open field which actually may be a family farm or a corporate farm or something like that.

John Jones:

We do often see these cases in desert lots in Las Vegas. They are typically desert lots that are just completely open, where people are entering regularly to cross. It may not be a

situation where the owner wants them to cross, but it does happen. That is different than a family farm that may be fenced off. You are talking about trespass law there as well. It gets complicated. If it is an open lot in Las Vegas and there are no barriers to entry, then I think that would be a premises to which the public has access.

Chair Miller:

I apologize for using the term farms; clearly that is where I grew up. Here we have mini deserts. Mr. Piro, do you have anything to add, or would you concur with the statements of Mr. Jones?

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

I actually concur with Mr. Jones.

Chair Miller:

I think that is what we were getting to. Assemblywoman Summers-Armstrong, does that clear up some of your questions and concerns?

Assemblywoman Summers-Armstrong:

It does. Thank you for digging in. I think that was important for me to understand.

Chair Miller:

Seeing no further questions, I will open it up for testimony in support of Assembly Bill 408. I will start in Carson City.

John Jones:

We are in support of A.B. 408. Thank you.

Jason Walker, Sergeant, Administrative Division, Legislative Liaison, Washoe County Sheriff's Office:

I am testifying in support. This is a major public safety issue, not only for the drivers who are performing the trick driving, whether it be an eight-mile drag race or drifting along an intersection, but for the passengers and the onlookers as well. I agree with the Metro Lieutenant, that it is the thrill of the illegal activity—the fact that they could go to the drag set up in Las Vegas, but they do not want to do that. It is the illegal activity that gives them the thrill. I also echo their comments. We do have the same problem in Washoe County as well, not to the magnitude of Metro. Luckily for us, we have snow a few months out of the year. The drifting contests are not happening; they are doing it as a matter of driving down the roadway, drifting. I agree that the deterrent is the tow bills for this. Again, I am testifying in support.

Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson:

I want to thank Assemblywoman Brown-May for bringing the bill. I also want to thank Clark County and the Las Vegas Metropolitan Police Department for leading on this issue. We believe this is a good public safety policy and are in full support.

Zach Bucher, Government Affairs Officer, Government and Community Affairs, City of Las Vegas:

We have seen an increase in these instances in our jurisdiction. We think this is a commonsense tool that law enforcement can use to help address this issue. We are here in support.

Chair Miller:

Is there anyone else here in support in Carson City? Not seeing anyone, is there anyone in Las Vegas who would like to testify in support? Not seeing anyone, is there anyone on the phone?

Nic Ciccone, Legislative Relations Program Manager, City of Reno:

I want to say thank you to the bill sponsor. This has been a very large issue in northern Nevada. I am glad that our southern Nevada friends have proposed this bill and will provide us these additional tools in our toolbox.

Greg Herrera, representing Nevada Sheriffs' and Chiefs' Association:

Nevada Sheriffs' and Chiefs' Association is in support of A.B. 408 and would like to thank Assemblywoman Brown-May for bringing this bill forward.

Chair Miller:

With that, I will open it up for testimony in opposition of Assembly Bill 408.

John Piro:

We agree with this idea in concept, adding a consequence to the actions. One of the things we are concerned about is the tow fees. I ran these numbers with Ms. Kennedy. It is about a \$280 tow fee, and then the tow truck yard will charge you per day. We have a conceptual amendment, and that is why we are in opposition. [Conceptual amendment was not provided as an exhibit.] We think Assemblyman C.H. Miller has a good measure in Assembly Bill 303, that deals with tow fees and ability to pay. We would like to propose that in this bill.

Let us say a teenager may be using the family car in an inappropriate way. You do not want the family to lose the car. You want the penalty, you want that to happen, but you do not want them to lose the car for good. You do not want someone to lose the car that gets him to and from work so that he can pay these towing fees. The reckless driving citation is also going to cost money, and insurance is going to cost more money because of the points on the

license. We do not want to completely destroy somebody's life, but we do want to stop the bad behavior. We are offering a conceptual amendment in this regard and hopefully the bill could pass in that capacity.

Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office:

I echo the sentiments of my colleague. I think that the concept of the bill makes sense; the behavior is disruptive to the public and it can be dangerous. But we do not want these collateral consequences to ultimately ruin someone's life. If the family car is relied upon for a parent to get to work, we are hoping to take that into account when we are thinking about it. Lastly, I would be remiss to not mention, being from the Bay Area, that the correct term is "sideshow" and not trick driving.

Chair Miller:

Is there anyone else in opposition in Carson City or Las Vegas? Seeing no one, is there anyone on the phone? Hearing no one, I will open it up for testimony in neutral. Is there anyone in Carson City or Las Vegas who would like to testify in neutral? Seeing no one, is there anyone on the phone? Hearing no one, would the presenter like to make closing remarks?

Ashley Kennedy:

I want to say thank you for allowing us to present this bill today. I know that Assemblywoman Brown-May has been in discussions with the public defender's office, and we will continue to work through some of their concerns and hopefully present you something that we agree to.

Chair Miller:

With that, I will close the hearing on Assembly Bill 408 and move on to our next bill, which is Assembly Bill 369. There are a number of people listed as presenters, so I will hand the presentation over to the sponsor, Assemblyman Orentlicher, and let him introduce, exchange, and rotate out the multiple speakers as he sees fit. Assemblyman, your bill hearing is open, please proceed.

**Assembly Bill 369: Revises provisions governing the administration of justice.
(BDR 14-67)**

Assemblyman David Orentlicher, Assembly District No. 20:

Thank you for the opportunity to present Assembly Bill 369, a bill that Assemblywoman González and I are cosponsoring [[Exhibit C](#)]. We are grateful for our partners in this effort, Ms. Moseley-Sayles and Mr. Shepack, both from the Fines and Fees Justice Center. They do great work to achieve a fairer system of fines and fees. They translated the concepts we will be discussing into the bill you have before you. Please note that we will be discussing the conceptual amendment [[Exhibit D](#)]. It is the entire current version of the bill. We are also joined on Zoom by Professor Eve Hanan from the William S. Boyd School of Law, University of Nevada, Las Vegas (UNLV), and two of her students, Shaelyn Dieter and

Ryan Edwards. Ms. Dieter and Mr. Edwards have studied fines and fees in their misdemeanor policy course with Professor Hanan, and their terrific analysis is one of the exhibits [\[Exhibit E\]](#) posted on Nevada Electronic Legislative Information System (NELIS).

In addition to the fines and fees part of the bill, section 11 addresses a gap in our law that we have for protecting public officials from threats or intimidation. Chief Judge Patricia Lenzi alerted me to the problem and is here to discuss that this morning. There are two parts to the bill: the making fines and fees fairer for offenders and protecting tribal judges.

I am going to do a brief overview and then I will turn it over to our students in Las Vegas to talk more about the fines and fees, and then Judge Lenzi will wrap up with section 11. Why are we doing this? It is a very familiar adage: the punishment should fit the crime. Take the speeding example; if you are driving 10 miles over the speed limit, you might have a lower fine than somebody who is driving 50 miles over the speed limit. It is very important that punishments be proportionate. If you fine everyone the same amount, that means we punish lower-income offenders more severely, because how the amount of the fine impacts you depends on how much you earn.

Here are some examples [page 2, [Exhibit C](#)]. If you have a \$200 fine and you are earning \$20,000 a year, that \$200 fine is 2 1/2 days of your income, assuming you work 5 days a week. That is a stiff fine for you. Somebody who is earning \$80,000 and is fined \$200, it is now less than a day, still more than half of the day, but compare it to 2 1/2 days. Then, if we get somebody who earns \$800,000 a year, the \$200 fine is less than 10 percent of their day's income. If we are concerned about deterring people and for one person, it is less than 10 percent of their income as opposed to 250 percent for another person, it is not going to have the same impact on both offenders, and that is not right.

For low-income offenders, when we get to the very low end, fines and fees for minor violations may be unaffordable [page 3]. We just had the example from the public defender about what happens if you tow the family car; it may make it impossible for them to get to work. With these kinds of fines and fees, the offender may not be able to pay if he has a really low income, and \$200 or more can mount up quickly. What about a family's housing, food, child care, and transportation? How are they going to get to their job? The offender may suffer some of these offenses. He may go to jail for failure to pay and then he can lose his job, his housing, et cetera. That is the fines and fees overview.

As I said, we protect public officials in our state from threats or intimidation; there is a statute for that. Our statutory protections do not apply to tribal judges who live in our community. They are not living on tribal land, they may be our neighbors, and they are serving as tribal judges. As you will hear from Judge Lenzi, they can be subject to very unfortunate, severe threats and intimidation.

I will now go over the basic provisions of the bill [page 4, [Exhibit C](#)]. The fines and fees provisions that we are applying are not for all offenses. This is for minor traffic violations and misdemeanors, that is in section 4 of the bill. We are proposing a waiver of fees for

people below 200 percent of what is called the "very low-income level." This comes from the federal Fair Housing Act, which defines what it means to be low income for purposes of housing affordability. In Nevada, the very low-income level for a family of four is around \$40,000. It varies by city, but it comes out to around \$40,000 annually. This bill will waive fees on the lower-income side, and then reduce the fines by a particular amount depending on income. Starting at the higher level of low income, it will be a 25 percent reduction, then a 50 percent reduction, a 75 percent reduction, and ultimately, at the very low-income level, a full waiver of fines, subject to a minimum fine of at least \$10. Some offenses have a minimum fine, and that would be preserved too. The lower the income, the less you pay, but you always have to pay something.

Finally, this section adds tribal judges to the list of public officers protected from threats or intimidation; that is section 11. Section 4; section 5, subsections 2 and 3; and section 11 are the major substantive parts. There are definitional sections and so on, but those are the core parts of the bill. And now, let us turn to Mr. Edwards, Ms. Dieter, and Professor Hanan.

Ryan Edwards, Private Citizen, Las Vegas, Nevada:

My partner, Shaelyn Dieter, and I are both students at UNLV's Boyd School of Law. Last semester we were in Professor Hanan's Misdemeanor Policy Practicum course. The project we did in that course was researching how similar reductions of fines and fees by ability to pay regimes have worked. As part of that, we did legal research, of course, it being a law school. We also did some fact-based research, academic research, and we participated in quite a few court observations at both the justice and municipal courts located around Las Vegas.

One of the first things we always heard, especially at the courts, when they found out about our project was some form of saying, We already do that. There are currently alternatives to simply paying in full any fines and fees that are assessed to you. We talk about those in our report [page 4, [Exhibit E](#)].

Right now, the four options that someone has, instead of just paying in full are: First to set up a payment plan where he pays some predetermined amount each month or week until he has paid off everything. The second one is to participate in a work program or community service program which works off the fines and fees at a rate equal to the state minimum wage, which currently sits at \$10.50 per hour. A third option, though not very popular, is to work off the fines and fees by serving in jail; that eliminates fines and fees at the rate of \$150 per day. Of course, the fourth option is that a judge has discretion under Nevada statutes to reduce the fee and fine. However, in all of our court observations, we never really saw that option taken. The most common thing is to simply tell people to set up a payment plan or enroll in community service.

We have used as an example a baseline fine and fee assessment of \$300, which seems like a reasonable amount to assume for a lot of these traffic violations that someone might incur and explained how some of these alternatives are merely conversions of one unit of

punishment into another. A \$300 fine and fee total would take 28.5 hours of community service to absolve; or if you were unfortunate enough to resort to the jail option, that is two days in jail.

One of the things we try to highlight is that we choose a fine or monetary amount as our default unit of punishment, but it could just as easily be one of these others, and you might similarly see some inequities. For example, if all violators of this hypothetical traffic violation were assigned 28.5 hours of community service, it might be unseemly to then let anyone of means simply pay \$300 to get out of that punishment. There is a reason that we use the standard unit of punishment of money. Part of it is that it is simple to administer and simple to understand, but also it is a substantial source of court funding in Nevada and other states.

Another big question we often get is, How will Nevada afford this? As we talk about it in our report [page 14, [Exhibit E](#)], Nevada does not punitively track outstanding fines and fees. It also does not track as a separate expenditure the amount that is collected or anything that is an asset due. We also do not know anything about the overall collection rates. Somewhat as a proxy, you can see in the courts' annual reports the amount of administrative assessments that are recovered. Those reports show a substantial portion of money coming in, several million dollars, and those are specifically used to fund specialty courts.

In lieu of specific data from Nevada, though, we can turn to other jurisdictions that have implemented similar fee-scaling provisions, and we discuss some of those in our report [page 16]. In each of those, collections and revenues have modestly increased or stayed the same. You see this in California, which recently implemented a system just a few years ago, and they have had a few years of data to assess. Some of the reasons for this are simply that you have increased collection rates and less oversight. People do not need to come to the court as frequently to get checked up on. There are also the additional fines that accrue in choosing one of these alternatives. For example, the payment plan of community service also has an additional fine attached in addition to the fee that you are working off or paying off through the plan. Other states have implemented this.

We also saw the number of outstanding debts and administration costs and burdens going down as well as collateral consequences, such as outstanding warrants being issued for failing to pay and driver's license suspensions. I am now going to turn it over to my partner Ms. Dieter, who is going to talk about a couple of our other issues that we identified.

Shaelyn Dieter, Private Citizen, Las Vegas, Nevada

Thank you for having us here today. This has been a wonderful opportunity and we are looking forward to answering some of your questions. To follow Mr. Edwards' point about some of the common questions that we get, and we anticipate you might have about this bill, and because we all have an internal pessimist inside of us, is: What about people who might lie about their ability to pay [page 9, [Exhibit E](#)]? We have a two-part answer to that question which we think might cure any concerns.

First, Nevada already implements two ways in which individuals who are coming from a lower-income standpoint can receive waivers of filing fees in civil settings. Also, as many of you know, public defenders are provided when the individual is accused of a criminal offense. We touch on both the *in forma pauperis* (IFP) form as well as the public defender (PD) forms to reflect on the questions that are asked and to draw comparisons between how a form that is proposed in A.B. 369 might play out in reality. In addition to that, both the IFP form and the PD form contain, as you can see on the report that we submitted [pages 11 and 12], entries which require individuals to claim the information that they are stating under the penalty of perjury, which gives folks a bit of an incentive not to lie. Additionally, we did substantial research on the implementation of such standards on other court systems. Much of this gets to the point that individuals often underestimate the income that they make, and rarely lie on forms such as these.

Moving forward to another question which stems directly from this: How will our courts—particularly our justice and municipal courts, which are moving at a fast pace with a high saturation of cases—implement these types of forms during a very quick proceeding? If any of you have observed a justice or municipal court setting, an individual might take no more than 30 seconds to submit a guilty plea to a traffic ticket or to a low-level misdemeanor offense. Similarly, we point back to the IFP or the PD form. The IFP form is a form individuals file prior to civil action or alongside the filing of a civil action in which the court then reviews it, waives the filing fee, and notifies the individual after the action has been filed. This is dissimilar to what our understanding of A.B. 369 would implement for the filing form, which would be more similar to the PD form, in which individuals quickly fill out information pertaining to their household income, monthly income, social security benefits, and so forth, and briefly submit that to the clerk of the court, who hands it to the judge, who reviews it for accuracy. That is a quick process. I am sure many of you have observed the initial appearance process. It is incredibly fast-paced as well, and takes essentially no time. Implementation would hopefully not be an intense burden on the courts.

Additionally, we just want to stress that this is a compliance bill. We want to ensure that individuals are taking responsibility for the traffic offenses they commit and for the low-level misdemeanors they might commit. However, imposing a heightened fine or fee on individuals of low-income status creates an unreasonable and frankly, unfair implementation of justice. Individuals should not have to choose whether they want to put food on the table for their families or pay their \$100 monthly payment plan towards a traffic ticket that they received 6 to 12 months prior.

I want to thank each of you once again, and I will turn it to Professor Hanan to talk a little bit about our experiences outside of Ryan's and my coursework, when Professor Hanan was able to work with individuals who were facing fines and fees in the misdemeanor clinic.

Eve Hanan, Associate Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas:

I would like to thank my students for their wonderful work on this report. I also practice law in the Thomas & Mack Legal Clinic, where I supervise students who represent people

charged with misdemeanors. These are folks who do not get a public defender because they are not facing jail time, they are facing fines and fees. Our practice in the clinic is essentially a fines and fees defense clinic in the justice and municipal courts.

In that capacity, as an attorney, I would like to share a vignette of a client whom I will call Darlene, whom the clinic students represented. She lives in rural Clark County. She lives in a trailer, and she has no access to nearby public transportation. Darlene is around 60 years old. She is trained as a hairdresser. Before the pandemic, she rented a booth in Boulder City in a salon.

When the pandemic hit, the salon closed and she lost her source of income. What quickly followed is that she could not make her car insurance payments, her insurance lapsed, and her registration was suspended. She was pulled over for driving without insurance and without a registration and received a ticket to go into Henderson municipal court. She went to court; she told the judge that she was unemployed and did not have money to pay the ticket. The judge said, Your option is community service or paying on a payment plan, which also costs another fee. Because she lived so remotely and did not have a way to drive to get to the sites of the work program for Henderson, she agreed to the installment or the payment plan. However, even that amount was too much for her to make and a warrant was issued for her arrest.

She called us. It was the first case in her life, and the first warrant, certainly in her life. She was weeping, she was terrified, and she felt trapped in debt. She could not pay the Department of Motor Vehicle fees to reinstate her registration and license. She could not get her insurance reinstated. Now she had a warrant out for her arrest. She was in a vicious downward spiral with increasing debt and hopelessness.

What we have found is that she is very representative of our clients. She is one of many. She wants to comply with the law. She wants to follow the rules, but it has basically been made impossible for her. What we have found in the clinic is that when we ask judges to waive or reduce fines and fees for clients such as Darlene, we are told that the options are community service—often many hours, close to 100 or sometimes more—or a payment plan that will go on almost indefinitely for some of these clients. Our opinion is that is simply not fair for someone like Darlene. What would be fair is if at the first appearance, a judge would assess her ability to pay and scale the fines and fees according to her circumstances.

As you have heard from my students, the statutory scheme permits these reductions and waivers, but there is really no procedure in the statute that ensures implementation of this fairly and consistently. It is our position that these years of impossible installment payments or hours of community service are simply not equal justice for someone like Darlene. It is a ticket that you or I could pay with a few clicks on our laptop. Thank you again, members of the Committee, and to Assemblyman Orentlicher for bringing this bill. I will turn it over now to the next speaker.

Patricia R. Lenzi, Chief Judge, Winnemucca Indian Colony:

I want to thank the Committee for allowing me to speak to you all today, and especially to Assemblyman Orentlicher for sponsoring this bill. I am a member of the Saint Regis Mohawk Tribe and I serve as Chief Judge for the Winnemucca Indian Colony Tribal Court. I am a conflicts judge for the Yerington Paiute Tribe and the Duckwater Shoshone Tribe here in Nevada, among other tribes I serve in other states, including Chief Judge for the Cedarville Rancheria of Northern Paiute people. My work takes me across jurisdictional boundaries of many tribes throughout Nevada and California. I am a citizen of the state of Nevada and the United States. I reside in the jurisdiction of Douglas County, not on the lands of any specific tribe. Tribal court cases are all civil and criminal cases just like state courts here, everything from probate to homicide.

I want to share with you two specific situations I have personally experienced to explain why I am here to support the amendment to *Nevada Revised Statutes* (NRS) 199.300 contained in A.B. 369, section 11. On February 28, 2014, I was serving as a conflicts judge at the Colorado River Indian Tribes in Parker, Arizona. That day, I was also appointed chief judge at the Cedarville Rancheria in Alturas, California. I was sworn in telephonically because I was in Arizona. The very first hearing was also held telephonically for that reason. The only reason I am alive and here to tell you about this today is because it was a telephonic hearing from my part. It was a housing eviction case, and the person being evicted brought in two nine-millimeter handguns, took them out of her backpack, killed four people in the room, and wounded two others. When her guns jammed, she got a butcher knife and cut the throat of one of the people in the room to make sure he died. I found out that some of the people who were potentially involved and supportive of the shooter lived in Reno. I live in Douglas.

I went to the Department of Motor Vehicles to have a confidential license plate put on my car. It turned out, unless I was a domestic violence victim, I could not have that done. I had to find a court case to take into the Nevada court. Well, there was no category that fit me so I could not have that done. Then I was later appointed as chief judge for the Winnemucca Indian Colony. I was a conflicts judge there and now I am chief judge.

I presided over a very contentious housing eviction case. The former chief judge had recused himself, and I know Assemblyman Orentlicher has a copy of the order where he recuses himself. I urge you all to read it [not provided as an exhibit]. There is also a letter of support from that particular tribe regarding it, and I ask you to read that too [not provided as an exhibit].

While that case moved through tribal court, I became the object of a campaign to attempt to convince me to stop serving as judge for that tribe, to disqualify myself. There were Twitter and Facebook posts about me, images about me, information about my family and my personal life. There was a letter writing campaign to my tribe and every single tribe where I serve as a judge. It actually was cited as one of the reasons that the Washoe Tribe told me they felt it was unsafe for them to continue having me as their judge.

Meantime, several incidents occurred on the colony lands involving charges of assault on federal officers, among other charges. Anonymous letters were mailed from Reno and Vermont. They were sent not only to me at my home and to every tribe I worked for and my own tribe, but every one of my neighbors by name, naming every adult member of their household, including their adult children. The letters were sent from anonymous people claiming to be concerned citizens. The return addresses showed the Winnemucca Indian Colony or my husband's name and our home address. Needless to say, my neighbors were quite disturbed. The letters urged people to hunt me down at the grocery store, stop me, do whatever they can to prevent me from presiding over these cases—go to my house, knock on my door, find my family.

I decided I should make a police report. I called Douglas County police. They said it is a tribal matter because they do not understand jurisdiction, even though I live in the county, and these letters came to my house and my neighbors, and it is stalking under Nevada law. I could not get a follow-up investigation from a detective. Under federal law, I made a report to the Bureau of Indian Affairs and the Federal Bureau of Investigation's Major Crimes Task Force. It turns out it falls in a loophole of federal law. Under Nevada law, tribal judges are treated like any private citizen. Under California law, where I preside at Cedarville, a private citizen. But for the fact that it was a quadruple homicide that went through their state courts because of jurisdiction in their state, nothing specific was done for me because I live over state lines.

I am asking you to consider that every single one of the 27 tribes here in Nevada has a judge who does not live on tribal lands. They all live either out of state or somewhere in Nevada, but not on a reservation. Some are tribal members as I am, but not of the tribe we serve. Some do serve their own tribes, but they live off tribal lands. We all drive across jurisdictional lines to get to and from our courts and to perform our services. I want to ask you to amend NRS 199.300 to add tribal court judges. I thank you for your time, and I thank you, Assemblymen Orentlicher.

Assemblyman Orentlicher:

Thank you, Judge Lenzi for sharing your experience. That concludes our presentation. I will say we have heard some concerns, but we have not had time to work out a conceptual amendment. We are eager to sit down with the people who have concerns to work out revisions. We will do that as soon as we have time.

Chair Miller:

Before we begin questioning, Assemblyman Orentlicher, there was an amendment proposed by Fines and Fees Justice Center [[Exhibit D](#)]. Is that a friendly amendment?

Assemblyman Orentlicher:

Yes, that is designed to replace what you saw as the official version of the bill and to do some tweaking and make sure we get things in better form.

Chair Miller:

With that, I will open it up for questions.

Assemblyman Gray:

With regard to the fines and fees and the person being able to have their fee on a sliding scale based on their income, all he has to do is sign an affidavit declaring, under penalty of perjury, that he is telling the truth. Is there going to be a requirement to verify that? It seems like the payoff is almost bigger for him to lie than it would be to tell the truth.

Nick Shepack, Nevada State Deputy Director, Fines and Fees Justice Center:

Evidence shows that people do not lie on this, under penalty of perjury. It is the same thing with the public defender. In California, where they did a comprehensive study of their program, they found that 88 percent of people who sought these waivers lived under the poverty line and 46 percent of those individuals received at least one, if not multiple benefits. States that have implemented this with simply the penalty of perjury in the waiver have found that the vast majority, if not all of individuals are truthful in their income. In fact, what studies show is that people often overestimate the amount of money that they make, not underestimate.

Assemblywoman Hardy:

Thank you for this bill presentation and also to the students for their work on this. I think you mentioned this bill talks about a form that the court would have. Is this different than the form that currently exists for civil action and the public defender form? Section 5, subsection 1(a) mentions how the court would go about calculating the monthly income, and then references the HOME Investment Partnerships Act. Is that a form that currently exists or that would have to be developed?

Nick Shepack:

There is guidance for a form but seeing as Nevada does not have a unified court system, courts could modify the form that would best fit their court system. There is guidance for what would be on that form; however, we have not included in the legislation at this point a mandate that each form look identical as courts do not always operate the same throughout the state.

Shaelyn Dieter:

If I could jump in to add some additional insight on that. If you look at page 7 [page 9, [Exhibit E](#)] of our report, we include a Fines and Fees Justice Center Ability to Pay Application sample. We got to talk with ideas42, who discussed some of the behavioral elements of that with us. We think that is a really insightful way to look at it, and we discuss the simple implementation and how it could very easily allow courts to assess an individual's ability to pay.

Assemblywoman Gallant:

I would be interested in seeing that study just because on a personal level, and what I have gone through in the last two years in terms of the rental assistance and the income

verification, there was no verification. It was just based on a report. I can say I put more rental assistance applications in for my section 8 tenants than any of my other tenants. If their income had not changed, section 8 would have picked up the full. I know all of those applications were probably done under fraud. That is also under penalty of perjury when you are filling out those applications. I just want to make sure that the right people get assistance and that those other people are not going to exploit this system and this process.

Eve Hanan:

I want to speak anecdotally, but from the misdemeanor clinic experience, since we started it in 2018, just the transaction costs of going to a municipal or justice court and waiting sometimes for half the morning or half the day for a case to get called, is such that perhaps in this context when you are looking at a ticket that is probably between \$200 and \$800 to start out with, it is less likely that somebody with means would spend a day of their time going to court to fill out the form to state to the judge that they made less than they do unless they really needed it. Most people who have the money to pay the ticket can do it—certainly in traffic cases and some other cases as well, with low transaction costs—from the comfort of their home on online platforms. I think that does reduce the chances of fraud for this particular type of income assertion.

Nick Shepack:

To add to that, the study we referenced from California that was just published in 2023 and studies the last four years, is in NELIS [\[Exhibit F\]](#). If we have other information of a similar value, we will make sure to get that to the Committee.

Assemblywoman Cohen:

Thank you, especially to the students and to Judge Lenzi. I have some technical questions in section 7 with the presumptions. The word there is "presumption." It does not say rebuttable, and I know that is existing language. Then you have the list, including "Has experienced homelessness," and has "Received treatment at a psychiatric facility at any time in the immediately preceding 6 months." That presumes that people who have had treatment in a psychiatric facility are not on their feet, are not capable of caring for themselves, paying fines, that type of thing. I want to ask if those are rebuttable and why those were put on the list.

Leisa Moseley-Sayles, Nevada State Director, Fines and Fees Justice Center:

Much of this came from our guidance at the Fines and Fees Justice Center and the provisions for anyone experiencing being in an institution or anything was part of that guidance. The assumption was that if someone has experienced that and has been in an institution, then there could be a presumption that he does not have the ability at this point, financially, to pay that. We are okay with amending that out if we need to, but that is where that came from. Also with the presumption, initially what we were thinking is that anyone who meets any of these presumptions does not have the ability to pay based on our guidance and what we have seen. Anyone who does not meet any of those criteria, we wanted to be able to capture those folks also, which is why we included the actual ability to pay assessment.

Assemblywoman Cohen:

Yes. I am not necessarily saying that I want those out but maybe putting in "rebuttable." Regarding the HOME Investment Partnerships Act, what you are basing the poverty level on, why was that chosen instead of the federal poverty line?

Nick Shepack:

This metric was chosen because we strongly believe that the federal poverty line is too low and that this more accurately represents what low income is in Nevada. If you look at a single individual at the very low-income standard in Reno, Nevada, they do not make enough money at 200 percent to afford an apartment, according to all recent studies in Reno. The federal poverty line is slightly lower than that. We believed that it was important to capture people who struggled with housing into the very top level of these deductions.

Assemblywoman Hansen:

Thank you, Judge, for being here. I am sorry to hear what you have been through but appreciate the work you do. Looking at section 11, and adding in the language "including, without limitation, a tribal judge," I was thinking judges do have protections. When I read the existing language of NRS 199.300, it says, "A person shall not, directly or indirectly, address any threat or intimidation to a public officer, public employee, juror, referee, arbitrator, appraiser, assessor or any person authorized by law to hear or determine any controversy or matter" In existing language, I did not even see judge in there. I am assuming there is a different statute that explicitly says judges. I am trying to find out where the protection for judges is and trying to understand why tribal judges do not fall into that category.

Patricia Lenzi:

I would say that I am not a Nevada licensed attorney. I would bet that the Nevada District Attorneys Association would know which section mentions judges, if not Assemblyman Orentlicher. Most often, the state definition, when I read it, for any type of judicial officer referred to officers that preside over State of Nevada types of cases. It really tied it to the state.

Chair Miller:

We can have Legal Counsel respond to that as well.

Bradley A. Wilkinson, Committee Counsel:

Judges would actually be covered under two provisions; they are public officers, the very first term in the statute, and they are also persons authorized by law to hear or determine any controversy or matter.

Assemblywoman Hansen:

A judge falls under public officer. I have been educated; I appreciate that. You mentioned that you do not live on tribal land. If there is a tribal judge who lives on tribal land, are they protected?

Patricia Lenzi:

Under the tribe's law, the judge would be protected if the tribe has a provision, and every tribe has different laws. Under federal law, most tribes are limited to a maximum of one year punishment for even the most heinous crimes, such as homicide. We have misdemeanor murder, misdemeanor child molestation, misdemeanor rape, and robbery on every reservation across the country except for the few that have elected to amend their codes under certain new changes to the federal law in the last few years. That is the limitation for most tribes. I know under Washoe Tribe's law, I believe it was six months to a year, and if I were physically assaulted, six months. That is their law. But under federal law, it has to be an explicit threat. Even crossing the jurisdictional boundaries, there are so many nuances to federal law that we are not protected, especially there. We judges at tribes across the country have sought to make this change. Nevada would be a leader if you pass this.

Assemblywoman Hansen:

The problem with Douglas County was that they misunderstood their jurisdictional boundaries by naming tribal judges specifically under Nevada law. It would help be a tool to law enforcement to understand that yes, they actually can do something.

Assemblyman Yurek:

With the addition, it looks like the assignment of community service requires supervision, obviously. It also looks like we are adding some language that allows supervision to be accepted or supervised remotely. Can you help us understand what that might look like for a remote supervision?

Nick Shepack:

First of all, the expansion of community service is based off of the Texas statute. Texas has the most expansive community service statute in the country. Remote supervision could be in a situation in which somebody is completing a task. It is clear that the task has been completed once it is done. You do not need an onsite supervisor for the entire time. If you have somebody who is participating in some sort of program where they are able to show that they have completed the program, that is through a certificate online.

Also, in another situation, we may have opened it up so that somebody could go and get some sort of education. You have somebody who is getting misdemeanors because they are unemployed. They get a certificate that shows they have participated in a work first program that is going to educate them. The supervisor who signs off to the court could be offsite, showing that yes, Nick Shepack brought me the papers that documented that he had completed this thing. I am approved by the court to supervise this type of service. Maybe it is even a program like Hope for Prisoners. The supervision does not need to be an onsite person.

We are talking with some of the courts, and they want clarity on some of the language around different aspects of the community service provision. We are going to work with the courts to figure out the best way to clarify, so judges know exactly what supervision looks like and what the types of community service are.

Assemblyman Yurek:

I want to clarify, by that example, an individual could come in with the addition of misdemeanor crimes. A defendant could come in and say that they are having trouble meeting their financial obligations. Perhaps the crime was misdemeanor theft, something like that. The defense is that it is because they do not have a job, and then the community service could be giving them some sort of education to help them get a job, which can be done remotely or online and could be validated through a certificate. As I understood your example, would that be accurate?

Nick Shepack:

That is correct. The idea is that we want community service to benefit the individual and the community. We believe that those types of paths will benefit. If somebody is stealing because he does not have money and he spends hours working towards obtaining a job, we all benefit as a society.

Chair Miller:

Seeing no additional questions, I will open it up for testimony. I will start in Carson City. Is there anyone wishing to testify in support of Assembly Bill 369?

Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office:

I will keep my comments brief, but this bill simply makes sense. What I do want to add, however, is that when we are talking about fees and what happens if they are not paid, that money is being spent otherwise. When I first started as a public defender, I was doing misdemeanor bail hearings. When you show up to the jail in the morning, you talk to all the clients in the jail. There is a certain number of them who were on their way to work, were pulled over, and did not know they had a warrant for their arrest for some traffic violation or fee that was not paid. They have to then be processed, booked, their car is towed, and sometimes they elect to just spend time in jail to satisfy that fee. There is a dollar amount per day that they would get as credit towards that, but that costs the county money. It costs money to do all of these things. It makes more sense to expand that to make sure that maybe they are able to do community service and give back to the community. There is a cost that is borne that needs to be considered as well.

Wiz Rouzard, Deputy State Director, Americans for Prosperity-Nevada:

We thank the bill sponsor and the Chair for bringing this bill forward. We support this bill. We have worked very diligently ensuring that our correction system works properly, and this is just reinforcing the Eighth Amendment when we talk about excessive fines. The Founding Fathers understood that there is a due process that should also be applied when it comes to monetary means for things like what we are talking about here today. We believe when we talk about our society, we want to make sure we are putting people in a position to actually correct their action, not put them in the position to be more so harmed by the actions of government. We believe that A.B. 369 does create a beautiful framework where we can

achieve that goal in making sure that those who are least fortunate have the ability to actually correct their actions, but also still be able to contribute to society. We greatly support this bill, and we urge you to vote yes on this bill.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

We think this is a great commonsense solution to some of the problems we are seeing in court and will provide a good pathway for people to get on their feet during this time without taking them out of the game for too long. We urge your support.

Lilith Baran, Policy Manager, American Civil Liberties Union of Nevada:

We strongly support this measure, and I will echo the sentiments of my colleagues. Excessive fines and fees oftentimes prevent folks from getting to work efficiently, paying other bills, and they are having to choose between life sustaining measures and paying a court fee for simply being late on registration or insurance or something like this. Please take that into consideration.

Maria-Teresa Liebermann-Parraga, Deputy Director, Battle Born Progress:

We are in strong support of this bill. I want to keep our tribal judges safe and also make sure we are giving Nevada some relief, connecting this to the economic landscape that we are living in. I am sure both legislators and people monitoring this legislative session have heard, whether it is housing or other economic issues, Nevadans are struggling. This would be an incredible relief for people who may be facing fees in order to be able to not have this be another weight added to their financial pressure. Also, if I may add, if Battle Born Progress and Americans for Prosperity are on the same side, it might be worth considering.

Patricia Melynkov Ackerman, Private Citizen, Minden, Nevada:

I am very grateful to Assemblyman Orentlicher for bringing this forward. I think that you all can see we have an individual whose life is being threatened and she is falling through the cracks. It was very emotional for me to listen to this testimony because she is a friend. I urge you all to do the right thing. Protect her life. Thank you.

Chair Miller:

Is there anyone else in Carson City to testify in support? Seeing no one, is there anyone in Las Vegas who would like to testify in support? Seeing no one, is there anyone on the phone?

Jodi Hocking, Founder/Executive Director, Return Strong!; and Private Citizen, Carson City, Nevada:

Today I am also here as a woman who was a single parent, raising my children alone. We were a family who lived on the bubble of poverty. I worked and made approximately \$21,000 a year. At that time, that was the cut off for most types of assistance. While I received some assistance with child care, we did not receive food stamps or medical care.

I want you to understand that during those years, we lived in survival mode, and I made a lot of decisions that were solely about surviving at that time. I drove illegally for many years, with a suspended or expired registration and no driver's license.

During one particularly difficult period, with my back against the wall, I wrote a check for groceries that I knew was bad. We had run out of everything, even the backups that fulfilled their hunger but not nutrition. The kids were asking for things to eat, and I did not have anything. Absolutely nothing was left. We had already accessed the food pantry and I had nowhere left to go. I wrote a bad check for groceries. Soon after, the check and the car landed me in court. Following that, I was caught in a cycle that is really difficult to explain as you are trying to dig yourself out of a hole. I was still trying to live on \$21,000 a year and find a way to work because I did not have a car anymore, and my job was 40 minutes away. It was my only choice. I already struggled to keep food on the table, but now I also had to pay the fees associated with the check and the vehicle issues. I remember going back to court for extension after extension after extension, taking time off work, which put us further in the hole.

My daughter, who is now a social worker, talks about those years and about those struggles. In general, for all people, she often says that people do not always make good choices; they have good choices. Assembly Bill 369 gives people a chance at making better choices. It levels the playing field just a little bit, and sometimes people do not need the carrot or the stick, they just need a fair opportunity. Return Strong! works with so many families who are surviving with their back against the wall, living on one income while supporting an incarcerated loved one. We want to thank everybody who was part of making this happen. We are in support of A.B. 369, and hope that you move this forward and it goes into statute.

Chair Miller:

Is there anyone else on the phone? Hearing no one, I will open it up for opposition starting here in Carson City.

Jeffrey S. Rogan, representing Clark County:

I am here today on behalf of the Justice Courts of Clark County with some opposition to this bill as drafted. I would like to point out that we only had a brief moment to discuss this bill with the Fines and Fees Justice Center this morning, and they are agreeable to meeting with us to address the concerns I am about to discuss with you.

Turning to the bill itself, I would like to begin by pointing out that existing law already provides an indigent person two remedies if they are unable to pay a fine, fee, or an assessment. First, as you heard today, when a person is ordered to pay a fine and the assessments by a Clark County justice court, he is offered the opportunity to complete community service if he cannot afford those fines, fees and assessments. The existing law is NRS 176.087. Also, if a person cannot afford a fine, fee, or assessment, the court has the option under a different statute, NRS 176.085, to reduce the amount due upon a finding that the fines, fees, and assessments are excessive in relation to the financial resources of the

defendant. Again, this is already existing law. We are unaware of any concern that has been raised as to why these two statutes do not address the issues that have been brought forward today.

Our next concern has to do with the operational impacts of this bill, particularly sections 2 through 5. As I mentioned, existing statutes allow the court to reduce a fine, fee, and assessment based upon the circumstances of the defendant. This finding is not conditioned upon any strict calculation of indigency, as this bill proposes, but upon a review of the whole person, and that is all of the relevant facts and circumstances of a defendant's life that would justify a reduction. The proposed bill instead requires the court to use these specific guidelines under the HOME Investment Partnerships Act. The technical guide for calculating income under this standard is 139 pages long. As suggested by one of the presenters, the court and the staff would need to review the information provided of every defendant before assessing a fine. I point out that this would require our courts to review the eligibility of tens of thousands of defendants every year. To review this paperwork, verify the accuracy of the information, and assess the ability to pay of every defendant under these guidelines, the Las Vegas Justice Court alone would require an additional 14 full-time employees. As all of this could not be done at the time of arraignment, when most cases—criminal and traffic—are resolved, we would require additional court dates to effectuate the purposes of this bill.

Lastly, we have several concerns regarding some other particular provisions of the bill that are undefined, as Mr. Shepack mentioned. It is not apparent to us or courts as to how a person can complete remote community service, for example. Also, the definitions of some of the community service under the last section of the bill are unclear, such as what is meant by public service or work on public projects. Our courts will need clarity on that to ensure that the defendants are completing appropriate community service.

Again, I want to thank the bill sponsor and the Fines and Fees Justice Center for their willingness to work with us to address these concerns. And I look forward to meeting with them.

Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson:

I first want to thank Assemblyman Orentlicher for being very gracious with his time—I was able to speak with him briefly last evening—also, the stakeholders; I spoke with them very briefly this morning as well. We look forward to continued conversations on this bill. I also want to acknowledge the UNLV students. It is great to see them involved in the legislative process.

However, the City of Henderson is opposed to A.B. 369 as drafted. We are opposed to the bill for several reasons, but in particular, the use of the 139-page HOME Investment Partnerships Act to calculate household income, believing this may require a large amount of staff time to assess a person's ability to pay.

Secondly, changing the requirements for the supervising authority for community service: We believe this adds complexity to a system that is already in existence. Lastly, the conflicts with current NRS: For example, the bill would decrease the number of years courts have to collect a fine or fee from ten years to five years on all offenses handled by our courts. We want to note that the Legislature recently increased the number of years from eight years to ten years in 2021 in Assembly Bill 116 of the 81st Session.

We also want to point out the conflict with domestic battery mandates. For example, the statute regarding domestic battery mandates that the convicted individual be sentenced to include for a first-time offense, "Perform not less than 48 hours, but not more than 120 hours, of community service." For a second offense, "Perform not less than 100 hours, but not more than 200 hours, of community service." This is in NRS 200.485. We believe that conflicts with part of the bill as well. We look forward to working with Assemblyman Orentlicher and the stakeholders, but we are opposed to the bill as drafted today.

Zach Bucher, Government Affairs Officer, Government and Community Affairs, City of Las Vegas:

I just want to agree with my colleagues from Clark County and Henderson. We share the same concerns. We are very appreciative of Assemblyman Orentlicher and his willingness to work with us going forward. I am here now in opposition but look forward to continuing the conversation.

Chair Miller:

Is there anyone else in opposition in Carson City or Las Vegas? Seeing no one, is there anyone on the phone? Hearing no one, is there anyone in neutral in Carson City or Las Vegas? Seeing no one, is there anyone on the phone? Hearing no one, Assemblyman Orentlicher, would you like to make some final remarks?

Assemblyman Orentlicher:

As you can see, this was a real team effort. I am grateful for the help of Mr. Shepack and Ms. Moseley-Sayles with the Fines and Fees Justice Center; my cosponsor, Assemblywoman González; and especially the faculty professor, Ms. Hanan, and the students, Ms. Dieter and Mr. Edwards, at UNLV. Thank you for hearing this.

We are planning to work with the officials who spoke. I think we can address some of their concerns by going through the California experience and the other studies in this area and other things. We do anticipate making some changes because there are some areas that need clarification. We look forward to working those things out and coming back to you with a bill that everybody is comfortable with.

Leisa Moseley-Sayles:

Thanks again to Assemblyman Orentlicher and all of the gratitude that he expressed to everyone, including the Committee members. I want to stress that this is a compliance and accountability bill. I do not think there is anyone in this room, in support or opposition, who does not want to see people held accountable for their actions. This bill, above all, is a

compliance bill, and though there are already in statute remedies for courts for defendants, community service, and also reduction of fines, what we have found is that those remedies are not always applied. Though someone can ask for reduction or do community service, what this bill does is allow for an ability to pay assessment, which takes into account, as Mr. Rogan stated, someone's circumstances, their income, the number of dependents that they have in their house; and though that is in statute, according to Mr. Rogan, it is not always applied.

We have been doing court observation for some time. What we have found is that in most cases, the judges do not offer that; they do not take that into consideration. They offer a payment plan. What this bill does with an ability to pay, is it scales the fine. What we have seen is, when the defendants are given a blanket fine, the same fine, it reduces the accountability and it reduces compliance. But when someone has a fine that is proportionate to their ability to pay it, it increases the compliance. We referenced a report out of California [\[Exhibit F\]](#). What California found is almost a 70 percent compliance rate, and by compliance what they mean is, those fines were paid in full—well over 70 percent compliance rate when people's ability to pay is taken into consideration and the fines are reduced according to what their income is.

In reference to using the HOME standard, we are simply using the income guidelines. We are not asking courts to review 100-plus pages of documents to assess someone's ability to pay. We are simply using those income guidelines.

Someone mentioned domestic violence. Two points: one is anecdotal, and one is going to be evidence based. I have experienced domestic violence. Many of you who know me on this Committee and know me in this room know that I left an unhealthy marriage for that very reason. I am very sensitive to that. I have also served on the Attorney General's Committee for Domestic Violence, formerly known as the Nevada Council for the Prevention of Domestic Violence, since 2012. What we have found is, with perpetrators of domestic violence, particularly in the rurals—I am speaking to this more as a personal comment and someone who serves on the council rather than in my capacity as the State Director for the Fines and Fees Justice Center. Particularly in rural counties, what we have found is, because community service options are so few and those communities experience higher levels of unemployment and poverty, what we often see with compliance around the programs and around the community service is lower. We are totally amenable to adjusting or carving out some of the concerns about community service for perpetrators of domestic violence. If we want compliance and if we want accountability, then we will make it so that population can comply as well. We are not asking for a complete reduction. We are not asking for any of that.

I also want to point out that courts still have the ability to do what courts will need to do. They have the ability to order the minimum amount or maximum amount of community service. We are not asking to change that. This is simply asking to remove any other additional barriers that we have seen and that our data supports that reduce compliance.

With these barriers removed, you can look at your reports that we have submitted, look at the data. What it shows is that when we take these things into consideration, compliance rates and accountability increase.

With that, I want to again say thank you to the Committee. We are totally amenable to working with all of the stakeholders, including community members who are stakeholders. I am grateful for the opposition because, in my opinion, opposition breeds dialogue. It is an opportunity to discuss everyone's positions and take those things into account. I am confident that when we do that, we will come up with a bill that works for everybody, we will be able to hold people accountable for their actions, and we will increase compliance. [Also included but not mentioned is [Exhibit G.](#)]

Chair Miller:

I appreciate the willingness to continue working on this legislation. I do not want to put time limits on anyone, but we all know where we are in session, and we just have a few weeks. I anticipate this work will happen quickly. Thank you for that, and I will go ahead and close the hearing on Assembly Bill 369. With that, our last order of business for the day is public comment. Is there anyone in Carson City or Las Vegas wishing to make public comment. Seeing no one, is there anyone on the phone? Hearing no one, I will see everyone back at 8 a.m. tomorrow. This meeting is adjourned [at 9:58 a.m.].

RESPECTFULLY SUBMITTED:

Garrett Tamagni
Recording Secretary

Nancy Davis
Transcribing Secretary

APPROVED BY:

Assemblywoman Brittney Miller, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a copy of a PowerPoint presentation titled "AB 369 Making fines and fees fairer for offenders Protecting tribal judges," submitted and presented by Assemblyman David Orentlicher, Assembly District No. 20.

[Exhibit D](#) is a proposed amendment to [Assembly Bill 369](#), submitted by Leisa Moseley-Sayles, Nevada State Director; and Nick Shepack, Nevada State Deputy Director, Fines and Fees Justice Center.

[Exhibit E](#) is a report titled "Adopting Fine Scaling by Ability to Pay in Nevada," submitted and presented by Ryan Edwards, Private Citizen, and Shaelyn Dieter, Private Citizen, Las Vegas, Nevada.

[Exhibit F](#) is a report titled "Online Infraction Adjudication and Ability-to-Pay Determinations, Report to the Legislature, dated February 2023, submitted by Nick Shepack, Nevada State Deputy Director, Fines and Fees Justice Center.

[Exhibit G](#) is a document titled "FFJC California Report Highlights," submitted by Leisa Moseley-Sayles, Nevada State Director, Fines and Fees Justice Center.