

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

**Eighty-Second Session
February 22, 2023**

The Committee on Judiciary was called to order by Chair Brittney Miller at 8 a.m. on Wednesday, February 22, 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:

None



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Traci Dory, Committee Secretary
Ashley Torres, Committee Assistant

OTHERS PRESENT:

Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General
Aaron D. Ford, Attorney General
Heather D. Procter, Chief Deputy, Post-Conviction Division, Office of the Attorney General
Tonja Brown, Private Citizen, Carson City, Nevada
Jennifer P. Noble, Chief Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Annmarie Grant, Private Citizen, Quincy, Massachusetts
Jim Hoffman, representing Nevada Attorneys for Criminal Justice
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Jason Walker, Sergeant, Patrol, Legislative Liaison, Washoe County Sheriff's Office
Adrian Hunt, Police Detective, Intergovernmental Services, Las Vegas Metropolitan Police Department
Serena Evans, Policy Director, Nevada Coalition to End Domestic and Sexual Violence
Nicole Reilly, Ombudsman, Office of Ombudsman for Victims of Domestic Violence, Sexual Assault and Human Trafficking, Office of the Attorney General
Tess Opferman, representing Nevada Women's Lobby
Greg Herrera, representing Nevada Sheriffs' and Chiefs' Association
Liz Ortenburger, CEO, SafeNest
Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson
Jesse J. Watts, Sheriff, Eureka County

Chair Miller:

[Roll was called. Committee protocol was explained.] We have one presentation and two bill hearings today. We will take the agenda in order. We have a presentation on the overview of the Office of Attorney General.

Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General:

We appreciate your time and I have the pleasure to introduce Attorney General Aaron Ford. He is going to walk you through the breadth and depth of all the things this amazing office covers.

Aaron D. Ford, Attorney General:

My office consists of nearly 350 dedicated and hardworking individuals committed to enforcing Nevada law and upholding justice for the protection and benefit of our residents. Every Attorney General brings their own perspective as to how to protect and improve the lives of Nevadans. The overarching theme I have used to set the intention of our work is a theme that you have heard me say time and time again, and that is our job is justice.

To guide my decision making, I have framed my administration by a set of policy priorities. These priorities do not override our statutory obligations but rather they serve as a lens through which we view our work. I refer to these priorities as the five "Cs": constitutional rights, criminal justice and reform, consumer protection, client service, and community engagement [page 2, [Exhibit C](#)]. Each of these Cs serves as a moral compass to guide the ways in which our office can serve Nevadans.

As the chief law enforcement officer in the state, the Attorney General's Office represents the people of Nevada. We are the people's lawyer before state and federal trial and appellate courts in criminal and civil matters [page 3]. We serve as legal counsel to State officers, State departments, and most State boards and commissions, and we work with our local, state, and federal law enforcement partners to protect the public. In addition to my written testimony, I have provided Committee staff with an agency organizational chart. I also invite you to read a copy of the agency's biennial report which can be found at nv.ag.gov. While that report goes into significantly greater detail, I would like to highlight a few key accomplishments of the Office of the Attorney General over the last two years of my administration.

We have saved over 1.33 billion taxpayer dollars by vigorously defending the state against tort claims. This number does not include litigation on other causes of actions. We have entered into settlements with opioid manufacturers, distributors, and marketers, bringing hundreds of millions of dollars into the state to help the state combat the opioid crisis. In fact, today you will hear about another settlement bringing in nearly 30 million additional dollars to help fight this opioid crisis. We investigated and prosecuted those who seek to harm Nevadans, including murderers—some of whom committed their crimes in our prison system—abusers, and scammers. We provided robust constituent services to Nevadans asking assistance, receiving over 18,454 complaints and 39,069 inquiries in the last reporting period.

Our office is composed of several divisions with specific assignments related to the Attorney General's statutory responsibilities and the administration of the office. I would like now to turn to each of those divisions in more detail. Several divisions are dedicated to one of the most sacred responsibilities in the office, and that is seeking justice for victims of crime and protecting vulnerable Nevadans.

Chief Alissa Engler heads the Criminal Prosecution Division [page 4]. This division prosecutes financial fraud, including scams, insurance fraud, workers' compensation fraud, securities fraud, and mortgage fraud. She also prosecutes sex trafficking, cybercrimes, public

integrity cases, and crimes that occur in the Department of Corrections facilities. In the past two years, this division has charged several murder cases including killings in Nevada's prisons. We are continuing the prosecution of Charles Sullivan. If you are up north, you may recognize this as a cold case in regard to a 1979 murder of a Reno woman, though the trial was delayed due to the pandemic and other evidentiary issues. We have also prosecuted hundreds of cases from child sex trafficking, to scams and frauds, to animal abuse. In state fiscal years 2021 and 2022, the Workers' Compensation Fraud and Insurance Fraud Units filed 308 prosecutions and had over \$1.2 million in restitution awarded to the State. As a prosecuting agency, it is particularly important to me that when it comes to the criminal justice system and criminal justice reform, we do not just talk the talk, we walk the walk. Our office adopted new internal policies to ensure that our charging decisions and bail requests are appropriate and ethical, we incorporate the victim's wishes whenever practical, and we seek justice, not vengeance.

I am happy to be accompanied by Chief Heather Procter, who heads our Post-Conviction Division [page 5, [Exhibit C](#)]. She will be presenting a bill a little later. That division handles petitions for habeas corpus in state and federal courts. This division also is responsible for representing the state in death penalty appeals. In the past biennium, the Post-Conviction Division opened 185 federal habeas cases and 381 state habeas cases. This division is also responsible for implementing the law passed by this body to compensate those Nevadans wrongfully convicted of crimes they did not commit. To her credit, Chief Procter took that job, and has presented to us probably a dozen or so wrongfully convicted individuals whom we have been able to compensate. We talk about justice in our office, and I say justice does not always manifest itself in an arrest and conviction. Sometimes it manifests itself in an exoneration and compensation, and we have been able to demonstrate justice through the work that Ms. Procter has been able to accomplish with her division.

Our Medicaid Fraud Control Division, headed by Chief Andrew Schalke [page 6], investigates and prosecutes fraud by health care providers in the Nevada Medicaid program. For the past biennium, the division opened 186 investigations, successfully prosecuting 34 criminal cases involving fraudulent activities by companies scamming the Medicaid system and recovered \$10.3 million in the process. The division also reviews reports of abuse of criminal neglect of patients in facilities that use Medicaid. This division focused on community engagement, partnering with medical schools to train students on how to identify signs of elder abuse and neglect.

Next is the Bureau of Consumer Protection (BCP) Division headed by Chief Mark Krueger [page 7]. That division diligently works to protect Nevada consumers from economic harm. The division has four primary areas of focus: (1) advocacy for ratepayers before the Public Utilities Commission of Nevada and the Federal Energy Regulatory Commission to ensure ratepayers receive reliable utility service at a reasonable cost, which is predominantly Consumer's Advocate Ernest Figueroa's responsibility; (2) protection of consumers through enforcement of the Nevada Deceptive Trade Practices Act; (3) prevention of unfair marketing through enforcement of the Unfair Trade Practices Act and federal antitrust laws; and (4) administration of the Home Again Nevada Homeowner Relief Program.

In the past two years, this division was responsible for bringing tens of millions of dollars to the state as a result of settlements with companies that violated Nevada's consumer rights, such as consumer data breaches. Of note, we negotiated a settlement in the T-Mobile-Sprint merger to guarantee that every T-Mobile job in Nevada would stay in Nevada and employees' bargaining rights would be protected. Additionally, T-Mobile is offering, and will continue to offer, a low-cost plan for Nevada's consumers and build-out coverage for rural Internet service. The team is also responsible for responding to thousands of COVID-19-related complaints, such as price gouging, failure to issue refunds, illegal evictions, and scams. The BCP also represented ratepayers before the Public Utilities Commission, saving them from increased utilities costs, especially due to the fiscal impact of the pandemic. This includes litigating a general rate case before the Public Utilities Commission that resulted in a \$120 million credit to the ratepayers in southern Nevada. Consumer Protection staff also helped Nevadans to protect themselves from scams through community education and outreach programs. Just the week of Valentine's Day, I was on with AARP of Nevada talking about romance scams. These are the types of things we do from a community outreach perspective in the Consumer Protection Division.

Our Investigations Division is helmed by Chief William Scott, a 29-year veteran of the Las Vegas Metropolitan Police Department, who has been with us for about four years now [page 8, [Exhibit C](#)]. The investigators work directly with our prosecutors and local and federal law enforcement partners to investigate a wide array of criminal activities. Since 2020, the Investigations Division has completed almost 950 investigations and referred 440 cases for prosecution, arrested 188 subjects, and recovered 61 missing children. Additionally, the Attorney General's Office provides vital support to Nevada through the multijurisdictional task forces such as the Internal Revenue Service's financial fraud task force; the child exploitation task force; the health care fraud task force, relative to opioid-related matters; the Southern Nevada Human Trafficking Task Force; the elder and vulnerable person investigation task force; and the Federal Bureau of Investigation's Joint Terrorism Task Force. The Investigations Division has also focused on engaging with the local community as well to better foster relationships and trust with people whom we serve.

In the audience is someone you may hear from on another bill: Nicole Reilly, our Domestic Violence Ombudsman [page 9]. Nevada holds the unacceptable distinction of being one of the worst states for domestic violence. The Domestic Violence Ombudsman serves as a liaison with all state and local partners on issues related to domestic violence, sexual assault, and human trafficking. The Ombudsman serves as a state-level coordinator with oversight of many programs and initiatives, including the statewide Committee on Domestic Violence and Nevada VINE [Victim Information and Notification Everyday], which is a statewide automated system that allows victims to receive timely and accurate information on the custody status of offenders.

One of the carryover programs my predecessor created that I kept was the Office of Military Legal Assistance (OMLA), initially introduced by former Attorney General Adam Laxalt [page 10]. Special Assistant Attorney General Dawn Jensen oversees that particular division, and they provide pro bono legal advice for veterans and military families in civil matters.

It is the first of its kind in attorney general offices around the nation. It has been replicated. We are very proud of this. I was talking to the Ohio Attorney General in December, I believe it was, who is looking now to replicate this program in Ohio as well. Since the program launched in 2015 and with the assistance of our pro bono legal aid partners, the OMLA has helped over 3,650 service members and veterans. Even during the pandemic, the OMLA continued to operate virtually, particularly assisting military families facing evictions.

I would also like to talk about a few of the things that we do representing our state. The office represents all constitutional officers and the state Executive Branch agencies as well as many statutory boards and commissions [page 11, [Exhibit C](#)]. The attorneys within these divisions have a broad range of expertise, including the fields of state and local taxation, business law, regulatory law, election law, employment law, constitutional law, and civil litigation. It is in these divisions that my priority of client service is paramount, though staff often find ways to incorporate other priorities such as the protection of constitutional rights.

The Gaming Division, headed by Chief Darlene Caruso [page 12], advises the Nevada Gaming Commission, the Nevada Gaming Control Board, the Nevada Athletic Commission, and the Nevada Gaming Policy Committee. In addition to daily legal advice, staff also represent the Board and Commission at monthly public meetings. Litigation in this division includes disciplinary actions brought against gaming licensees, disputes regarding taxes and fees, hearings on the surrender of gaming licenses, and actions to add people to the list of excluded persons, or the "Black Book."

The Boards and Open Government Division, helmed by Chief Rosalie Bordelove [page 13], provides counsel to all the *Nevada Revised Statutes* Title 54 occupational licensing boards on administrative law and procedure as well as administrative rulemaking on the law of licensure, and the Open Meeting Law. Deputies in the division attend meetings of all the boards and commissions as well as serve as prosecutor and board counsel in disciplinary proceedings against licensees. Staff are also responsible for enforcing the Open Meeting Law for all public bodies.

Our Government and Natural Resources Division is overseen by Chief Greg Ott [page 14]. That Division serves client agencies and officials responsible for providing core government infrastructure such as the State Controller, the Department of Administration, the Nevada Indian Commission, and the Public Employees' Retirement System. The division also serves agencies responsible for managing and protecting the state's natural resources and environment, such as the State Department of Conservation and Natural Resources, the Division of Environmental Protection, the Division of Water Resources, the Agency for Nuclear Projects, and others. Attorneys in this division helped come to a settlement agreement with the U.S. Department of Energy to remove that plutonium shipment—you remember that secret plutonium shipment? We came to a settlement with the U.S. Department of Energy to get that removed after it was sent here without our consent.

Sharon Benson is our new Chief of the Health and Human Services Division [page 15, [Exhibit C](#)]. Staff in that division serve as counsel to the Department of Health and Human

Services (DHHS) and its many divisions. This division advises DHHS on some of the most critical matters to Nevadans, which include services in its Divisions of Health Care Financing and Policy (Medicaid); Welfare and Supportive Services; health, mental health, and developmental services; Aging and Disability Services; and the Division of Child and Family Services. As you can imagine, this team has been absolutely critical to the state's COVID-19 response.

The Personnel Division is run by Chief Cameron Vandenberg [page 16, [Exhibit C](#)]. That division advises Executive Branch departments, divisions, and agencies on employment law, including administrative hearings regarding discipline of state employees, judicial review of administrative proceedings, resolution of grievances before the Employee-Management Committee, and litigation in all state and federal courts regarding the employment relationship.

Chief Randy Gilmer oversees our Public Safety Division [page 17]. That division advises the Department of Corrections and provides representation in all inmate-related litigation, including property and constitutional claims. Staff in this division also participate in the Inmate Early Mediation Program, which is a unique program of alternative dispute resolution for inmates.

The Transportation Division, headed by Chief Lori Story [page 18], advises the Department of Transportation Board of Directors and the many divisions of the Nevada Department of Transportation. Staff in this division provide counsel on many complex transportation matters. Attorneys in the division also represent the Department of Public Safety and its many divisions, including the Division of Parole and Probation as well as the Department of Motor Vehicles.

Chief David Pope oversees the Business and Taxation Division, which provides daily legal advice to the Department of Taxation as well as the Department of Business and Industry and its eleven divisions, including the Divisions of Real Estate, Mortgage Lending, Insurance, Financial Institutions, the Taxicab Authority, Nevada Transportation Authority, the Office of Labor Commissioner, Consumer Affairs, Housing, Industrial Relations, and the Occupational Safety and Health Review Board [page 19]. Attorneys in this division also enforce the tobacco Master Settlement Agreement and its compliance program to prevent underage smoking. Staff also represent the newly created Cannabis Compliance Board and prosecute violations of cannabis licensees.

We also have a Solicitor General and a Complex Litigation Division in our office [page 20]. Solicitor General Heidi Parry Stern oversees that division. That division oversees all appeals before the Nevada Court of Appeals, the Nevada Supreme Court, and the United States Court of Appeals for the Ninth Circuit. It also houses the Complex Litigation Division, a team of highly specialized and experienced attorneys who work with staff in all divisions of complex matters or cases that expose the State to great financial liability.

Moving on to the Administrative Division [page 21, [Exhibit C](#)], we do a lot of work over here. The Office of the Attorney General is more than one of the largest law firms in the state—it represents a constitutional office elected by the people of Nevada to serve our state. The Office of the Attorney General has a lean, efficient staff who support the daily functioning of a large agency. The Administrative Division includes information technology personnel, human resources staff, office managers, and legal secretaries dedicated to each legal division. The Communications team manages a robust public outreach program to help Nevadans protect themselves from crime and respond to media inquiries. The Constituent Services Unit is responsible for attending to all complaints, concerns, and questions sent to the Office of the Attorney General. From July of 2020 to August of 2022, unit staff processed more than 18,000 complaints and over 39,000 inquiries. We have about four people in that office. I want you to understand how small that is and how much work they have had to do. This does not include phone calls and walk-ins to the office.

The Administrative Division also houses the Chief Financial Officer, who oversees fiscal analysts, tort claims administration, and the Grants Unit. The Grants Unit is currently administering 17 grants for a total of nearly \$16 million. The Grants Unit manages several federal programs focusing on supporting victims of domestic violence and sexual assault, elder exploitation, and gang suppression. The Grants Unit has developed close relationships with local, state, and federal agencies, victim service providers, and others to administer grants across the state.

Looking forward, it is clear that we, as elected officials, have a lot of work to do to build trust [page 22]. Our nation and our state are divided, and trust in our government is broken. Some of our neighbors trust what they read on the Internet more than the people who live in our communities and the people elected to represent them. I often say, as a representative of the government, there are three types of communities we have to work with. One is the type that you see on *Law and Order: SVU* where Olivia Benson is testifying on the stand and she is giving testimony and everybody in the jury is nodding their heads saying, Yeah, she is telling the truth, and anybody who says something different, they are liars. That is one community that has the utmost level of trust in government and law enforcement. There is another kind of community that had that high level of trust, but it is diminished for some reason—maybe it is because of something that happened to them, or it was something they see vicariously happen to others, but it is a diminished level of trust. Then there is a third community, frankly, the kind that I came from when I grew up that had little to no trust in government, let alone law enforcement, because sometimes we wanted them to come when bad things were happening. But sometimes bad things happened when they came. In my job as the top law enforcement officer in the state, in this office, as the people's lawyer, I view it as our responsibility to augment trust where it already exists, to restore it where it has been diminished, and to create it where it has never existed in the first place. That is the work we put in through our five Cs and through focusing on justice.

I am proud. I said it before and I will say it again, this is the best job I have ever had, and it is principally because of the people I work with. They believe in justice, and they put in the work to try to protect anyone who lives in this state. Every resident of the state receives the

protection of the Office of the Attorney General, and I am proud of that. It was my honor to be able to present to you. My executive team consists of: First Assistant Attorney General Craig Newby, Second Assistant Attorney General Christine Jones Brady, Solicitor General Heidi Parry Stern, Chief of Staff Teresa Benitez-Thompson, and General Counsel Leslie Nino Piro. They work hard with everyone else to ensure that we get things done.

With that, I make myself available for any questions the Committee may have. I know you have two of our bills to hear and hopefully we can satisfy any questions you have.

Chair Miller:

You alluded to the size and scope of your office compared to, say, the Office of the Governor. Is the Attorney General's Office the second largest or most robust office we have in the state?

Attorney General Ford:

We have nearly 400 positions available. We have 46 vacancies. If fully staffed, we have about 400 folks in our office. Frankly, I do not know where that compares to other state agencies. Clark County District Attorney Steve Wolfson and I go back and forth about who has the largest law firm in the state depending upon the day. We are certainly one of the largest law firms in the state relative to the work that we do.

Assemblywoman Cohen:

Can you talk a little more about the mediation program with the prisoners? What are the issues that are being addressed and how successful has the program been?

Attorney General Ford:

I would be happy to ensure that we get a more robust response to you on that. Chief Gilmer is the one who operates that, but it is a program that the United States District Court of Nevada set up to allow us to mediate lawsuits that arise out of prison. It could be something related to access to the commissary, toiletries, or something more substantive as well. As you may know, prison litigation is expensive. It is plentiful, and it takes up a lot of the time of the courts. The court instituted this program to allow us to have an intermediary step between some inmates filing lawsuits directly with the court to allow us to keep them from having to go there if we can get things resolved. We can get more information on that if you like.

Assemblywoman Cohen:

Okay, so it is not about their case; it is about their imprisonment.

Attorney General Ford:

Yes, that is right.

Assemblywoman Hansen:

A clarification to help me understand that portion of Assemblywoman Cohen's question. When inmates have an issue that is not going to be a legal case—not pertaining to their

incarceration—but they are just having trouble with necessities or medical treatment, do you have an ombudsman? How does that work? What is the process? I unfortunately am hearing from constituents who are having trouble with their loved ones with certain services within the prisons. I have the Lovelock Correctional Center within my district. I get communications that leave me wondering how streamlined that process is for an inmate who might not be getting the services they need, or the prices of things are too high. How is that handled? And through what? Through your agency or where?

Attorney General Ford:

We serve as counsel to the Department of Corrections and would not necessarily engage in the day-to-day conversations around the things you are talking about. If litigation arises out of it or if some legal issue arises out of it, my office would obviously be engaged. We may very well advise the Department of Corrections personnel on how to respond to certain inquiries and requests. I think the best thing for me to be able to do is to have Chief Randy Gilmer connect with you directly to answer any questions you may have so that I do not misspeak today on the record. As a general matter, I can say we work on the legal side of things, not really on the day-to-day interactions with the incarcerated individuals with personnel there.

Assemblywoman Hansen:

That would be appreciated. I am just wondering what the check is on those who are handling that. Are you a check on the Department of Corrections? If things are not getting done, who is the oversight for them to make sure they are being prompted to do their job?

Attorney General Ford:

I mentioned my five Cs at the beginning of this, constitutional rights being one of them. We advise all our clients from a constitutional perspective, from a consumer protection perspective, or whatever the case may be. To the extent we see issues arise that we think need to be redressed or addressed from the attorney/client perspective in relationship, we would have those conversations, which obviously would not be aired out loud here. That is one level of check to the extent you want to consider that a check. There is an agency that oversees the Department of Corrections, and that is called the Board of State Prison Commissioners. I sit on that board with the Governor and the Secretary of State. In fact, I think we have a meeting next week where we very well may be receiving information on some topics that are of import to you. That board has some level of interaction with the Department of Corrections as well. Those are my responses at this juncture, but I am happy to have Chief Gilmer reach out to you directly and we can arrange to have a more robust discussion.

Chair Miller:

Not seeing any other questions, I will close the presentation on the Attorney General's Office. I will open the hearing on Assembly Bill 49.

Assembly Bill 49: Revises provisions relating to criminal procedure. (BDR 3-419)

Heather D. Procter, Chief Deputy, Post-Conviction Division, Office of the Attorney General:

Assembly Bill 49 seeks to amend *Nevada Revised Statutes* (NRS) Chapter 34 regarding petitions filed by inmates after they are sentenced for a crime in Nevada [[Exhibit D](#)]. These petitions are referred to as a petition for writ of habeas corpus or a post-conviction petition. Under Chapter 34, there are essentially two categories of post-conviction habeas petitions: one in which the petitioners challenge their sentence or conviction, and the second in which petitioners challenge the Department of Corrections' computation of time served.

There are different procedural requirements for each depending on the type of petition filed. For instance, under existing law, petitions challenging the conviction must be filed in the county where the inmate was convicted, while petitions challenging the computation of time must be filed in the county where the inmate is currently incarcerated. A petitioner cannot challenge both their conviction and time calculation in the same petition. Unfortunately, these differences are sometimes buried in the fine print and can be difficult to navigate in practice. The intent of A.B. 49 is to simply clarify the existing law as to the different procedures and requirements for the two types of petitions. This will make it easier for an inmate to properly file a petition without an attorney, for attorneys who litigate such cases, and for the district courts that address these petitions.

First, we seek to clarify and distinguish the two types of petitions through sample forms. Existing law provides a sample petition challenging conviction but not to challenge the computation of time. Section 3 of the bill creates a form petition to challenge time computation.

Second, currently in Chapter 34, the language as to which agency responds to such petitions is somewhat inconsistent and can be confusing. The confusion was intensified when the Legislature in 2019 created a subtype of post-conviction petition: a petition for factual innocence. As a side note, we are not going to be talking about factual innocence petitions as a type of petition; that is simply a subtype. To create clarity, section 2 defines a "prosecuting agency" as the agency that prosecuted the crimes and then uses that phrase throughout the bill. While the prosecuting agency is generally the county district attorney, the Office of the Attorney General is also authorized to prosecute certain crimes. By contrast, we did not change existing law that requires the Attorney General's Office to respond to a time challenge action.

Third, section 26 repeals the existing requirement to file a return with the court. A return is a document prepared by the custodian of the petitioner, generally the Department of Corrections, which demonstrates the person is currently incarcerated or under supervision. As the responding agency to either type of petition generally provides proof of a judgment of conviction and addresses the custody status of the petitioner in the normal course of litigating such petitions, there is no need for a return. Instead, we move the requirement to provide

proof of the judgment and/or custody to the responding agency's response or answer to the petition, as reflected in sections 13, 14, and 16.

Fourth, with this wholesale clarification of Chapter 34, several sections include minor clerical changes to update the original language from the 1980s. Finally, the Attorney General's Office submitted a proposed amendment to A.B. 49 that we inadvertently left out of the original bill [[Exhibit E](#)]. This amendment addresses a provision in NRS Chapter 178 regarding the custody status of an individual when a court grants a state post-conviction petition. The intent of this amendment, consistent with the existing provisions of A.B. 49, is to provide clarity as to what type of petition such relief applies.

In closing, A.B. 49 does not seek to change the law or procedural processes already in place for post-conviction actions. The purpose and intent of A.B. 49 is to clarify the differences between the two types of petitions and to provide guidance within the existing statutes to explain the procedural rules associated with each type. In doing so, A.B. 49 preserves inmate rights while promoting judicial economy and clarity in the law.

Chair Miller:

Are there any questions from the Committee?

Assemblywoman Mosca:

While I was reading this, I was just wondering how often petitions come in incorrectly and what happens when that happens?

Heather Procter:

What generally happens is we do have, under existing law, the ability for the court to transfer the case to the correct county. The difficulty is having the clerk properly identify the case as either a challenge to the conviction and sentence or a challenge of the time calculated. For instance, when we have a time challenge, very frequently the inmates will file those in the incorrect county. They will file them in the county of conviction, and so we identify that, we file a motion to change venue, and we have the petition transferred to the appropriate county.

Chair Miller:

Before we continue with questions, you referenced an amendment, but we do not have it yet. Is that still coming? [Ms. Procter and Ms. Benitez-Thompson indicated in the affirmative.]

Assemblywoman Bilbray-Axelrod:

I did see an amendment [[Exhibit F](#)] asking if you would consider putting "posthumously." I know that is a big issue. We have people who come in here every day talking about their loved ones who have died. Would you consider that?

Heather Procter:

We are not considering that amendment. Our intent with this bill is simply to clarify the existing law, not to alter or change the processes. We felt that that did change the process, so we are not supporting that proposed amendment.

Assemblywoman Considine:

On the time computation form, what is the time limit for that? If someone is asking about the computation of their time, what is the time limit for them to get a response? How long do they have to file it? How long to get an answer?

Heather Procter:

There is no real time limit for an inmate to file a challenge to their time computation. The Nevada Supreme Court has actually determined that the one-year time limitation that applies to conviction or sentence petitions does not apply to the computation of time because that is an ongoing calculation. There is no limitation on when an inmate can file a challenge to their time computation. The only real limit would be, for instance, if they are challenging the calculation for parole eligibility. If they have already been considered by the State Board of Parole Commissioners, that consideration would be moot because they do not have any other remedy. As far as a response, the court will generally provide us 30 to 45 days to respond to those petitions.

Assemblywoman Newby:

In section 15, it references stating whether or not the petitioner is in custody or under the respondent's power or restraint and contemplates in those subsections that the petitioner would potentially not be in custody. Under what circumstances would there be a petitioner not currently in custody of the Department of Corrections?

Heather Procter:

Individuals who are on probation would not be supervised through the Department of Corrections; they would be supervised through the Division of Parole and Probation. There are also certain requirements for certain petitions that require the inmate to actually be in custody in order to bring their challenge. That custody can be through the Department of Corrections, the Parole Board, or Parole and Probation.

Assemblywoman Summers-Armstrong:

How do you distribute these forms and how are they accessible to those who are incarcerated? Is there a library? Are they easily accessible? If it is online, do you have step-by-step instructions to help people get this done so it can be put together as cleanly as possible?

Heather Procter:

These forms are provided through the law library of each institution, and they are not necessarily provided with self-explanatory instructions. But the library generally provides some sort of instruction on how to file these petitions.

Assemblywoman Summers-Armstrong:

Considering that this is a humongous effort to recreate these forms in a manner that you believe will help move this process through the court a little bit faster, why not give some type of clear instructions so that there are not delays? I am going to guess that if things are not right, you all send it back and they have to start all over again. Am I correct?

Heather Procter:

As far as including instructions, that is certainly something we would be happy to consider. There are other forms such as for federal habeas petitions that do come with a cover sheet with instructions. We could certainly adopt something like that for both of these forms. As far as if an inmate does not fill it out properly, we do not send it back; we do address it to the best of our ability. If we can understand what they are trying to say, then we will address the claims on the merits. If the petition is filed in the wrong county, which is actually quite common, then we will work to get it into the correct county.

Chair Miller:

What about providing some instruction? I know when I first sat on this Committee back in 2017, there was a question about inmate release forms before they could leave prison, and I was really upset to hear that the onus was put on the person who was incarcerated and they were not getting the proper assistance and guidance to facilitate this. With this form being new, will there, can there, why not provide guidance? Because I feel that is where we are really looking out for Nevadans. Could you please respond to that assistance part, that instruction part, to ensure that they are filling it out correctly and people just do not get caught in a cycle of repeat, repeat?

Heather Procter:

I would be happy to submit an amendment to actually include the instructions as part of the forms.

Chair Miller:

Thank you. I think that is highly acceptable from everyone up here.

Assemblywoman La Rue Hatch:

I have a question about the fact that these forms are actually being written into statute. Do you foresee that being an issue if there is a mistake or you need to change something because once they are in statute you have to wait for us to come back around to make those changes?

Heather Procter:

The forms for a petition challenging a conviction or sentence have been on the books since the 1980s. We are making a few clerical changes this time to that form. As far as the time calculation form, we try to be as inclusive as possible to cover any potential claims. Is it possible we will have to amend the form? Certainly, but we wanted something consistent that every library would have in order to provide every inmate, and that includes defendants who are not incarcerated, who may not have access to a law library, so they could use the statute to pull the correct form.

Assemblywoman Hardy:

Working in the courts for many years, I had experience getting these handwritten writs and so I appreciate your efforts to try to simplify these for individuals who are not familiar with navigating the courts. In section 8, you say the person must not be required to pay a filing

fee. Are there filing fees for these currently? Do they currently have to pay a fee to file these?

Heather Procter:

My understanding is no, there are no fees associated with either type of petition.

Assemblywoman Marzola:

How many of these petitions are filed per year?

Heather Procter:

The time credit challenges, we get about 300 a year. We hit a max of almost 2,000 one year as a result of a Nevada Supreme Court decision. It is not a consistent number. It really depends on the status of the statutes. For instance, if we receive a new time credit statute this year, we will see an uptick of probably double or triple that in the next year. As far as petitions challenging convictions or sentences, I cannot give you a number as we do not address most of those, but it is a very high number of petitions that inmates file.

Assemblywoman Marzola:

Do you know why you do not take those into consideration?

Heather Procter:

The petitions challenging a conviction or sentence are handled by the prosecuting agency, which is generally the district attorney. Our office only handles petitions challenging a conviction or sentence that we actually prosecuted. For the ones that we actually prosecute, which is a fairly small number compared to the number of prosecutions throughout the state, we see perhaps five to ten direct appeals or state habeas petitions challenging those convictions or sentences every year.

Assemblywoman Marzola:

Out of all these petitions that are filed yearly, are any of them dismissed or sent back because they are not filed correctly?

Heather Procter:

I cannot speak to the petitions challenging conviction or sentence. Once again, those that are sent are actually filed with the district attorney's offices. With the petitions challenging a conviction filed with our office, those are not rejected; we do address those. They are subject to procedural bars that are already in place, such as timeliness or successive petitions. It is possible that a petition could be dismissed on procedural grounds, but we do not reject them if they are not on the proper form or they do not address all of the questions. The same with the time credit challenge. Even with the time credit challenges, if we are moving it to a different jurisdiction, it is our policy to always look at that time credit challenge to make sure there is not something that needs to be addressed immediately before we do transfer those.

Chair Miller:

Is there anyone who would like to testify in support?

Tonja Brown, Private Citizen, Carson City, Nevada:

We do support this bill. I was hoping to have the proposed amendment on the factual innocence to be supported. I do want to mention something that was not mentioned by the Attorney General's Office, and that is dealing with wrongful convictions and how the Attorney General's Office is involved in carrying out wrongful convictions unknowingly.

Chair Miller:

Ms. Brown, are you supporting the bill in its entirety?

Tonja Brown:

I am, but I would also like to have our proposed amendment to this bill be considered and discussed. But in the long run, the Attorney General's Office unknowingly will fight the conviction.

Chair Miller:

Right, but Ms. Brown, this is to testify in support.

Tonja Brown:

We are absolutely in support of this bill.

Jennifer P. Noble, Chief Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:

We are here in support of A.B. 49 today. We believe Ms. Procter and the Attorney General's Office have done a good job of cleaning up some confusing language in current statute. I also think this will help out the process that we see where, for example in Washoe County, I might receive in our post-conviction division a petition from an inmate, and they are simply asking for calculation of time credits which, as she explained, cannot be heard in Washoe County; it has to be heard in Carson. What I have to do is move to transfer the case, and that just takes time away or makes it take longer for the appropriate court to consider the applicant's petition. We are in support.

Chair Miller:

Is there anyone else who would like to testify in support?

Annemarie Grant, Private Citizen, Quincy, Massachusetts:

I am in support of A.B. 49. I would like our amendment considered [[Exhibit G](#)]. The idea that we do not need posthumous language added because it changes the process is interesting. Truth be told, there are no other remedies besides this Legislature amending A.B. 49 to add the posthumous language for a deceased, wrongfully convicted person to be exonerated. The Attorney General Office's attempt may be to clean up the language, but I urge you all to use

it as an opportunity to level the playing field for all including the deceased. Would we have just said, Oh, well, if DeMarlo Berry died in prison being wrongfully convicted?

Chair Miller:

Ms. Grant, are you supporting the bill?

Annemarie Grant:

I am in support of the bill as is.

Chair Miller:

Is there anyone else who would like to testify in support? [There was no one.] We will close testimony in support and open it up for testimony in opposition.

Jim Hoffman, representing Nevada Attorneys for Criminal Justice:

We are not opposed to the overall concept of this bill. We think a clarification is reasonable and we would support that. There is a specific technical problem. I want to apologize to Chief Procter for not addressing this beforehand. If you look at section 9 that amends NRS 34.726, which is the time bar—this is what Assemblywoman Considine was asking about—it says you have to file a post-conviction petition within one year after conviction, but as Chief Procter said, there is currently no requirement. There is no time bar for filing a sentence calculation petition. In this bill, the deleted language in section 9, subsection 1, would remove that. It would apply the one-year time bar to a sentence calculation petition, and that is a problem because inmates often do not realize that they have a sentence error until after it has been a year. The error might not happen until more than a year has passed. And just overall, we believe it is not very fair to put a time bar on this. I understand from Chief Procter's testimony that that was not the intent of the Attorney General's Office. Hopefully we can work with them to get that technical fix in because we currently oppose the bill.

Chair Miller:

Thank you for that. Because you are not in the room, I wanted to let you know that Chief Procter and Chief Benitez-Thompson are taking notes right now and nodding their heads, so they hear you. They have indicated that it will be considered. Thank you for bringing that up.

Is there anyone else who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? [There was no one.] I invite Chief Procter to the table for concluding remarks.

Heather Procter:

We will be reviewing the bill for those amendments that have been discussed today. We will be submitting those.

Chair Miller:

We appreciate that. I will close the hearing on Assembly Bill 49. I will open the hearing on Assembly Bill 51.

Assembly Bill 51: Makes various changes relating to public safety. (BDR 14-426)

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

First and foremost, we want to thank Attorney General Ford and Chief of Staff Benitez-Thompson for sponsoring Assembly Bill 51 and working with us on this bill. The original language of A.B. 51 proposed to do a few things, including giving law enforcement up to 14 days to effectuate an arrest after someone is alleged to have committed an act of domestic violence. It added "attempt" to the definition of domestic violence. It provided a protective order violation exception to Nevada's two-party consent statute for recording of telephone calls, and it further cleaned up some errors in *Nevada Revised Statutes* (NRS).

After A.B. 51 dropped, we had stakeholder meetings that included the Attorney General's Office, the Nevada Coalition to End Domestic and Sexual Violence, public defenders, defense attorneys, law enforcement, and others. Based on those stakeholder meetings, we have come up with an amendment [[Exhibit H](#)] that I believe addresses everybody's concerns and we will be working off of that amendment this morning.

That amendment does three basic things. First, it gives law enforcement up to seven days to effectuate an arrest if there is probable cause to believe that battery domestic violence has been committed and the person is not on scene when officers first arrive. The second thing it does is clean up an enhancement when a crime is committed while the person who commits the crime is under a protective order. And then third, it makes domestic violence nonprobationable again. I will turn it over to Jennifer Noble to talk about the first thing.

Jennifer P. Noble, Chief Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:

I want to call your attention first to sections 1, 2, and 3 of the bill. Right now, you will see interlineated 24 hours to 14 days. As Mr. Jones explained, that is going to be seven days pursuant to the amendment. But I want to give you a little bit of background about why we wanted to give more time. Under current law, law enforcement responding to a domestic violence call must arrest the perpetrator if they have probable cause within 24 hours. That is, if they get there and the alleged perpetrator is there, they must effect that arrest if probable cause supports it. But if the perpetrator has fled, which often happens, police only have 24 hours to locate them in order to effectuate an arrest. For example, if the perpetrator shows back up at hour 25 at the victim's residence, police can no longer arrest based on probable cause connected to domestic violence.

Their only alternative is instead to submit for an arrest warrant application and by their nature, arrest warrant applications take time. Police must finalize all reports including photographs; 911 recordings have to be requested and obtained; and witness statements have to be gathered by law enforcement. Once they have that package together, they have to pass it along to the prosecutor's office. Then a prosecutor has to review all of that information and determine whether or not we agree there was probable cause to arrest and whether or not this is a case that can be prosecuted beyond a reasonable doubt. From there, if the district attorney makes the decision that this case is one that should be charged, it also has to go to a judge. So you can imagine the time that is passing. This takes many, many days, sometimes up to 60 days, for it to move through the system.

In changing the 24 hours to seven days, which was part of negotiations, we are hoping to give victims a little bit faster response time in terms of moving their case through the justice system. That does not mean that domestic violence calls do not remain high priority. They are almost the highest priority, absent something like 1 October. These are extremely important to law enforcement and nothing in this bill would alter that. They still have to try to locate for 24 hours, and it is only after they are unable to do that, does the seven-day extension, for lack of a better term, kick in.

John Jones:

The two remaining sections that we are dealing with are section 14, which is not in the amendment because that is not being amended, and section 16. Section 14 amends NRS 193.166, the enhancements statute. If you commit a felony, and while committing that felony you are also in violation of a protective order, current law says that you can be punished by an additional penalty of 1 to 20 years. However, it goes on to say that if the underlying crime is punishable as a category A or B felony, our most serious offenses, the additional punishment is a 1- to-5-year term. Clearly, those two numbers are flipped. It should be 1 to 5, and 1 to 20 if it is a category A or B felony. All this does is flip those numbers and correct that error that was in the NRS.

Turning to section 16, the Legislature passed Assembly Bill 42 of the 81st Session. That bill was amended a few times and during some of the final amendments, language was changed that inadvertently made felony domestic violence probationable. It was not listed in the title of the bill last session, it was not testified to—in other words, it was a completely inadvertent change that nobody caught. All this does is reinstate language in statute that makes felony battery domestic violence probationable. We are happy to answer any questions you might have about A.B. 51.

Chair Miller:

Are there any questions from the Committee?

Assemblywoman Mosca:

Do you have the data, or can you get the data, of how many more people would be arrested if it was changed to the seven days?

John Jones:

We can look to see if we can find that data. It is a great question. I just do not know if we keep stats on when somebody is arrested in relation to when they committed the crime. We may track that, but I do not know if we do.

Assemblyman Gray:

When these domestic violence issues happen, how many of those actually go to an arrest warrant since they fled and have already evaded that? Could this be creating actually more work for officers on the ground and ultimately more work for you guys, especially in cases like this where, given the extended time, the victim may no longer see herself or himself as a victim anymore?

John Jones:

I will note that time is not our friend in a case. The earlier we can effectuate arrest and get the case started, the better off I think we are going to be as a system. Oftentimes when we are talking about arrest warrants, the alleged perpetrator is often arrested months after the offense. At that point, we are really at the mercy of where the family—the defendant and the victim—are in the cycle of violence. We are often intervening at a time when everything is pretty stable, and at that point the victim does not want to testify because everything is fine at that point in time. With domestic violence specifically, the earlier we intervene, the better. Our intent with this is to intervene earlier.

Assemblywoman Gallant:

I am curious when the time clock starts. What is the precipitating event where you start getting to that 24 hour to seven days? Considering how highly skilled the batterers are, do you find that they wait 25 hours to show up and are you concerned that they are going to wait seven days and one hour?

Jennifer Noble:

With regard to your question about the batterer waiting until hour 25 or eight days, that is always a possibility; but the reality of the situation is, it is a lot harder to hide out for seven days than it is for 24 hours. That is our thinking here. I do not know if that answers your question. I think you asked two questions.

Assemblywoman Gallant:

What is the precipitating event that starts the time clock?

Jennifer Noble:

Thank you for the reminder of your first question. The time clock starts at the time the battery occurs and we get the call from the victim, the 911 call, the call to dispatch, or the call from a neighbor that there is a disturbance at the residence and probable cause is determined that domestic battery has occurred. Once that probable cause is determined, that is when the clock starts ticking because now we have probable cause to arrest the perpetrator.

Assemblywoman Bilbray-Axelrod:

In section 16 when we are talking about the ability to grant probation or suspend the sentence, is that if it is a misdemeanor, but then not allowing it is a gross misdemeanor or felony? Could you just tell me the difference between a misdemeanor and a gross misdemeanor in domestic violence?

John Jones:

Battery domestic violence first and second are misdemeanors in Nevada law. That would be anything that does not rise to the level of substantial bodily harm and in situations where a weapon is not used. Felony battery domestic violence would be if substantial bodily harm exists, if a weapon was used, or if they have twice been convicted of a misdemeanor battery domestic violence in the preceding seven years. The gross misdemeanor would be a battery domestic violence on a pregnant person. That is the only gross misdemeanor crime that we have right now.

Assemblywoman Summers-Armstrong:

I am trying to imagine what happens if Day Three, the police find that someone is at their cousin's, aunt's, or somebody's house and they go to make an arrest. When they are announcing themselves at the door, and that person says—because we have quite a few folks who watch all the things on television—and they are going to say, Do you have a warrant? How does the police deal with that? Because you are saying that for some reason you cannot get a warrant in seven days so you need to be able to arrest without a warrant. How do you deal with that? I would guess that you are going to get pushback from that person if they say, Do you have a warrant, and you do not have one?

Jennifer Noble:

I want first to distinguish, just to make sure we are all on the same page, warrants for arrest versus search warrants for a residence. If we have a probable cause to arrest an individual, that does not necessarily mean the police can enter someone else's residence to find that person. They usually need to wait until the person leaves the residence and do it that way. This would not give carte blanche because you have an arrest warrant for a person or a probable cause, rather, to arrest someone; that does not give carte blanche to law enforcement to kick down the door to demand to be let inside a house because they know the person they have probable cause to arrest just happens to be inside.

Assemblywoman Summers-Armstrong:

I understand the premises, but we are still not addressing the issue of the approach of the person you are trying to arrest, whether you are picking them up on the street, the grocery store, in the Walmart parking lot; you are approaching that person and you are going to tell them they are under arrest. If they ask you, Why? Do you have a warrant for my arrest? What is the response to that person since you do not have one?

John Jones:

I think that question is probably better presented to law enforcement. I think the last thing you all want is Ms. Noble and I acting as law enforcement officers. I do want to point out

that oftentimes what we are seeing is that law enforcement is being called back to the residence that they were originally called to, and the 24-hour time frame has passed. At that point, as long as there is not probable cause for a new crime, law enforcement cannot arrest on the original battery domestic violence. They have to wait until the warrant is actually signed by a judge. What we are seeing generally is law enforcement being called back to the original residence, but the 24-hour period has passed. That is generally how the alleged perpetrators in these cases are being found.

Chair Miller:

I would like to follow up to that question. Can you tell us how long it is actually taking them to file those arrest warrants?

John Jones:

It can take months, especially when you have the law enforcement community that needs to put the arrest warrant packets together, and the district attorney offices generally require that arrest warrants be submitted to us and state that all the discovery—body cam footage, any surveillance video, and witness statements—is there, as Ms. Noble indicated. Then my office reviews it for probable cause and to see whether or not we are going to approve it for arrest. In my office, once a screening deputy approves it, then it goes to a secretary to type. After the complaint is typed, the whole case then goes to a judge. Then we are beholden on how quickly the judge reviews it and determines whether or not they are going to issue an arrest warrant. Once the judge has determined that, it then has to go to a data entry person to enter into the computer system so that officers on the street can actually see that there is a warrant out for that person's arrest. That all takes time. We are often dependent on people who are not necessarily within the law enforcement community, such as judges. It takes time, and often when we are dealing with domestic violence, that time matters.

Assemblywoman Cohen:

There seems to be inconsistency in the language. In section 2, subsection 1, it says, "Except as otherwise provided in subsection 2, whether or not a warrant has been issued, a peace officer shall, unless mitigating circumstances exist, arrest a person when the peace officer has probable cause. . . ." I do not think the other sections have that "unless mitigating circumstances exist." What is the "unless mitigating circumstances exist" language and why is it not consistent throughout? Does that alleviate the need to have the 14 days because the mitigating circumstances gives the officer the ability to have more time than 24 hours?

Jennifer Noble:

The way I read that section is that it is requiring mandating an arrest if the person is located within 24 hours. It does have that mitigating circumstances language, and I imagine that might be in circumstances in which we have an alleged perpetrator who has a medical condition or they have checked into a rehab facility or something like that. As to why it is not like that throughout the bill, I do not have an answer for you right now. We took this from the existing statute so it has always been inconsistent if it is inconsistent, and we can certainly chat with you offline and provide an answer to the Committee that better addresses your question.

Assemblywoman Cohen:

I would like to understand that more because that did not make a lot of sense to me. Could you explain the changes in section 14 to me again?

John Jones:

In section 14 there are two numbers that were basically transposed. It says that generally if you commit a crime while in violation of a protective order, you are subject to an enhancement of 1 to 20 years. However, if you commit a category A or B felony, the additional punishment should be a term of 1 to 5 years. Those numbers are transposed. The reason we know they are transposed is the additional penalty cannot be longer than the underlying penalty. For example, if you commit a battery substantial bodily harm, it is punishable by 1 to 5 years. If you commit battery substantial bodily harm while you are under a protective order against the victim, then you can be punished by an additional term of 1 to 5 years. The maximum range is 5 years on category C, D, and E felonies, and since the enhancement cannot exceed that, then it makes sense that that number should have originally been 5 years. With respect to category A and B felonies, we are talking about charges with potential life tails, so the 1 to 20 years makes more sense there. I hope that answers your question.

Assemblywoman Hardy:

Looking at section 16, subsection 11, could you give more information about when a person who committed a domestic violence can or cannot be on probation and when they can have their sentence suspended? I understand when it is a felony they cannot, but subsections (a) and (b) say when they cannot and when they may grant probation. If you could just expand on those two conditions.

John Jones:

This would make any domestic violence that is not a felony eligible for probation: a battery domestic violence first or battery domestic violence second. It would not change any current practice that we currently have in place. All this would do is fix the error that was made in statute last session.

Chair Miller:

With that, I do not see any additional questions for you, but I would like to welcome Detective Hunt and Sergeant Walker to the table for questions because the members do have some specific questions from the law enforcement angle. I am not asking you to necessarily answer questions on the bill per se, but we have questions pertaining to procedure and process and what it looks like from the law enforcement angle.

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

My colleague, Adrian Hunt, and I hopefully have answers to your questions. I would like to first go back to Assemblywoman Summers-Armstrong's question regarding finding somebody at hour 25, whether they are walking down the street or at the 7-Eleven. The way that is currently written, we have the 24-hour shall arrest. If this were to go through and we were at Day Three, I do not need a warrant. I have probable cause to arrest this person.

I hope that that circles right back and answers that question for you, ma'am. I participated in the working group for A.B. 51, and I believe this bill is for the right reasons for victim assistance.

Having worked patrol as a deputy and having managed deputies on the supervisory level on patrol, it is a high priority call for service. It is one so much so, it is probably one of the most frequent calls for service, and as Assemblyman Yurek, with his law enforcement background can attest to, are highly emotionally charged calls for service. In 2015, Carson City Deputy Sheriff Carl G. Howell was killed in the line of duty responding to a domestic violence call. Obviously the response, investigation, and probable cause development, we notify all persons who are attached to patrol that we have the probable cause to arrest this person. We provide that information between covering shifts, if we have to have a special briefing, or whatever to say that we are looking for so and so; we provide that information. By moving that timeline from 24 hours to seven days, that allows us more time to contact these persons to arrest them. Therefore, as Mr. Jones presented, we present our case for prosecution as closed by arrest. I believe it is cleaner at that point. All information can go in at one time. That is my view on this. I am sure Detective Hunt has additional information.

Adrian Hunt, Police Detective, Intergovernmental Services, Las Vegas Metropolitan Police Department:

I echo the same sentiments as my colleague here. Domestic calls are important calls—priority zero for us as well. We actually respond with a minimum of two officers. We lost an officer at the end of 2022 responding to a domestic call as well. We take these calls very seriously, and we think that this bill will definitely help us as well.

Assemblywoman Newby:

Echoing one of the questions of my colleagues, what proportion of domestic violence cases do you think you would be able to arrest on with this expansion of time?

Jason Walker:

I would have to circle back on that. I will get with our intelligence center. I know when we make these arrests and I know when we submit for that warrant. I wish I had an answer for you currently, but I do not. I will note that and circle back to you on that because I am curious as well.

Assemblywoman La Rue Hatch:

We know you have the ability under this bill to arrest on Day Three, but I think, as Assemblywoman Summers-Armstrong said, many people are taught if police come to you to say, Do you have a warrant? What is your response, even though you have the authority? What is the response to the individual whom you are arresting? Additionally, with that, do you agree with Mr. Jones' timeline that it takes months to get that arrest warrant? Or do you find that it is different?

Jason Walker:

My response to the first question is, I think that might be an uneducated piece on the person I am arresting. Oftentimes people say, You cannot ask me questions because you have not read me my rights. I am not asking them incriminating questions. I am asking if they are okay or something along those lines. I will throw that into that lane.

Adrian Hunt:

From my experience on patrol, I have never had issues with somebody being defiant when it is regarding domestic violence. Usually, a lot of them understand and know why we are there. But again, I think this helps us because a lot of times they know and are gone for 24 hours and after 24 hours they will come back. With our policy, we have to be safe and strategic about it. I do not think it is something that we would go on a high-speed chase for if that is the case—if somebody jumps in the car and drives away, that is definitely not going to happen. But this definitely helps because within that 24 hours, it is usually an issue for us to locate someone if they know they may possibly be under arrest.

Chair Miller:

Thank you for your willingness to come up and answer some impromptu questions. I know people have real questions about what this looks like in daily practice. Is there anyone who would like to testify in support of A.B. 51?

Serena Evans, Policy Director, Nevada Coalition to End Domestic and Sexual Violence:

We are in support of A.B. 51. Leaving an abusive partner is the most dangerous time for victim survivors, with the risk of homicide increasing by 500 percent. Knowing that, victim survivors' safety and perpetrator accountability must be prioritized when law enforcement responds to domestic violence calls. It is not uncommon for the perpetrator to flee the scene once law enforcement has been dispatched and lay low in the subsequent days. Following the typical cycle of abuse, it is also not unusual for the perpetrator to show back up in a few days to try to reconcile with the victim survivor or to further intimidate or harm them. In these instances, while there may not be a physical altercation yet, victim survivors feel a very valid and real terror. Typically, it is only a matter of time before another instance of physical abuse—or worse, homicide—occurs. The current 24-hour arresting period limits the actions that can be taken in these scenarios and leaves victim survivors fending for themselves without protection. A victim survivor should not have to endure any more abuse for an arrest to be made. We believe that increasing the time frame for arrest will positively impact victim survivors, their safety, and may even save lives.

Nicole Reilly, Ombudsman, Office of Ombudsman for Victims of Domestic Violence, Sexual Assault and Human Trafficking, Office of the Attorney General:

Despite multiple multidisciplinary efforts over the past ten years, Nevada continues to enjoy the distinction of being, on average, number seven in the nation for domestic violence and domestic violence fatalities. In fact, according to a report published by the University of Nevada, Reno, it is more dangerous to be a woman living in Nevada than it is to be a police officer in our state. That is astounding. Nearly half of Nevada women will experience

physical violence, sexual assault, or stalking from their intimate partner in their lifetime. Over a third of Nevada men will experience this as well.

Assembly Bill 51 addresses two specific obstacles currently faced by law enforcement. First is the expansion of the time given to a police officer to make a discretionary arrest from 24 hours to seven days. Perpetrators of domestic violence often go into hiding, avoiding arrest. This limits the tools available to law enforcement. While domestic violence cases are always a high priority for departments, expanding the arrest window will improve justice for victims. Secondly, recent legislation, while well-intended, has had dire unintended consequences to hold perpetrators accountable. Domestic violence felonies should not be a probationable offense. Releasing a domestic violence perpetrator increases the fatality risk significantly for a victim. In a state that consistently ranks on an average of the top seven for murdered intimate partners, we cannot afford this misstep in our criminal justice system. Thank you for standing up for domestic violence victims in Nevada and working to make our criminal justice system trauma-informed and victim-centered.

Tess Opferman, representing Nevada Women's Lobby:

I will keep my comments brief because I know you have heard some excellent testimony. I do want to reiterate: we know that the most dangerous time for a victim survivor of domestic violence is when they decide to leave the relationship. After an altercation, an abuser may flee the scene and return at a later time, sometimes even a few days later. The current 24-hour period is simply not long enough for law enforcement to be able to locate an alleged perpetrator. We support any measures to help hold the perpetrators accountable and establish a safer outcome for victim survivors. We feel this bill can directly save lives and we urge your support.

Chair Miller:

Is there anyone else who would like to testify in support?

Adrian Hunt:

We support this bill. We also play a huge role in facilitating victims with the SafeNest advocates. They provide services to the victims as well. Officers also remove themselves from the advocate and the victim for privacy. We also remain at the scene until the advocate is done. We definitely wanted to let you know that as well. If probable cause is established, officers try to apprehend the subject within 24 hours, and resources and follow-up services support are also offered as well. That is one of the things we do when we do come back within those 24 hours—we offer resources and support to the victim as well. We are in full support.

Jason Walker:

We are in support of A.B. 51.

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

The Nevada Sheriffs' and Chiefs' Association is in full support of A.B. 51.

Chair Miller:

Is there anyone else who would like to testify in support?

Liz Ortenburger, CEO, SafeNest:

We work with 25,000 clients a year and primarily in domestic violence, sexual violence, and trafficking. In 2021, we partnered with the University of Nevada, Las Vegas for a study on what survivors want from the justice system. Overwhelmingly we heard two things: the abuse to stop and for them to be believed by the justice system. Assembly Bill 51 creates a pathway. As Ms. Reilly shared, we are on average the seventh most-dangerous place in the country for women being murdered by men. While it is not tracked, we believe up to 95 percent of victims recant or no show when they are subpoenaed to testify within criminal court for their case. We have two advocates at the district attorney's office in Clark County, and what I can tell you is, it is taking up to a year for warrants. We had a client just the other day who had her baby in her arms while she was abused. It took a year for a warrant to be issued in that case. This is absolutely critical that we create this system for survivors to feel like the justice system is working for them, and that is not what we currently have despite everyone's best efforts in the system. Let us start creating this pathway together. Assembly Bill 51 is an important first step, and thank you, Officer Hunt, for the shoutout to our SafeNest advocates who respond alongside Las Vegas Metropolitan Police Department on scene of these critical calls.

Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson:

My office handles about 1,000 cases of misdemeanor domestic violence every year. We are here in support of Assembly Bill 51. The extended time frame will lead to increased victim and public safety. I am very supportive of the clarification in section 16. The City of Henderson and I proposed Assembly Bill 42 of the 81st Session, which was the domestic battery jury trial bill. Because that was such a monumental change in the structure of the domestic violence law, some sections got moved around and there were some grammatical things going on, and it was a huge change. There was some unfortunate inadvertent interpretation that came from that. Section 16 would just clarify that felony would be nonprobationable as it has always been. We are supportive of A.B. 51.

Chair Miller:

Is there anyone else who would like to testify in support of Assembly Bill 51?

Jesse J. Watts, Sheriff, Eureka County:

I am proud to testify in support of A.B. 51 because this bill is the right thing to do for the victims of domestic violence in our state. Domestic violence is one of the most personal violent crimes in America, but especially in Nevada. Domestic violence spreads from boyfriend/girlfriend, marriage, and family relationships. Instances of domestic violence do not spare anyone—no race, age, sexual orientation, or individual is exempt from becoming a victim of domestic violence.

As a law enforcement officer, I have personally responded to hundreds of domestic violence investigations ranging from domestic battery all the way up to domestic homicide. In several

of the domestic battery situations, the suspect has fled before law enforcement's arrival. One example is on December 17, 2014, I arrived to find a mother and three very small children weeping as the mother had been badly beaten and required to be transported by emergency medical services. The suspect was in the wind. Two days later, I had contact with the suspect as he was packing his stuff to go to California where he knew he would not be arrested for the misdemeanor domestic violence warrant. The warrant for this person was issued January 27, 2015, over a month later. The suspect, still to this day, has not been arrested on this warrant and it has been over eight years. If this bill was in law at the time, I could have brought this suspect into custody when I had contact with him outside the 24 hours but within the proposed seven days.

Another incident was September 23, 2021, when a victim reported domestic violence in two different counties as they were traveling on the interstate when the abuse happened. I was not able to locate the suspect as he fled prior to my arrival. I did have contact with the suspect outside the 24 hours but within the proposed seven days. I filed my report with the district attorney for charges and the warrant was not issued until November 16, 2022, over a year later. These are just two examples that I have personally experienced where this bill would have benefited the victims of domestic violence by safeguarding them, ensuring justice was served within a timely manner, and the suspects held accountable.

Due to the 24-hour time constraints, these two victims of domestic violence were left abandoned by our system for years. I can address the Committee member's question about probable cause arrest.

Chair Miller:

Sheriff, you are a little past the two minutes, so can you conclude your remarks, please?

Jesse Watts:

Yes, I will. I am proud to stand with the Nevada District Attorneys Association and the Attorney General's Office in support of this bill. Ladies and gentlemen of the Judiciary Committee, I ask you to support A.B. 51 as the victims of domestic violence in the state of Nevada deserve it.

Chair Miller:

Is there anyone else who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? [There was no one.] I will close testimony on A.B. 51. The presenters have already indicated that they do not wish to make concluding remarks. I will close the hearing on A.B. 51. I will open it up for public comment. [Public comment was heard.]

I believe today was our last presentation in the Assembly Committee on Judiciary. Starting tomorrow it is just bills all the way to the finish line. We will see you at 8 a.m. This meeting is adjourned [at 9:56 a.m.].

RESPECTFULLY SUBMITTED:

Traci Dory
Committee 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, "Office of the Attorney General," presented by Aaron D. Ford, Attorney General.

[Exhibit D](#) is written testimony dated February 22, 2023, presented by Heather D. Procter, Chief Deputy, Post-Conviction Division, Office of the Attorney General, regarding [Assembly Bill 49](#).

[Exhibit E](#) is an amendment to [Assembly Bill 49](#) submitted by Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General; and presented by Heather D. Procter, Chief Deputy, Post-Conviction Division, Office of the Attorney General.

[Exhibit F](#) is a proposed amendment to [Assembly Bill 49](#) submitted by Tonja Brown, Private Citizen, Carson City, Nevada.

[Exhibit G](#) is written testimony in support of [Assembly Bill 49](#) submitted by Annemarie Grant, Private Citizen, Quincy, Massachusetts.

[Exhibit H](#) is a proposed amendment to [Assembly Bill 51](#), submitted and presented by John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association; and Jennifer P. Noble, Chief Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association.