

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

**Eighty-Second Session  
March 28, 2023**

The Committee on Judiciary was called to order by Chair Brittney Miller at 8 a.m. on Tuesday, March 28, 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](http://www.leg.state.nv.us/App/NELIS/REL/82nd2023).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Brittney Miller, Chair  
Assemblywoman Elaine Marzola, Vice Chair  
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:**

Assemblywoman Shannon Bilbray-Axelrod (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1



**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Shad R. Matheny, Postal Inspector, United States Postal Inspection Service  
Beth Schmidt, Director-Police Sergeant, Office of Intergovernmental Services,  
Las Vegas Metropolitan Police Department  
Dylan Keith, Assistant Director, Government Affairs, Vegas Chamber  
Greg Herrera, representing Nevada Sheriffs' and Chiefs' Association  
John T. Jones, Chief Deputy District Attorney, Legislative Liaison, Clark County  
District Attorney's Office; and representing Nevada District Attorneys  
Association  
Jason Walker, Sergeant, Administrative Division, Legislative Liaison, Washoe  
County Sheriff's Office  
Richard P. McCann, representing Nevada Association of Public Safety Officers  
Emily Persaud-Zamora, Executive Director, Silver State Voices  
Kimberly M. Surratt, representing Nevada Justice Association  
Courtney G. Joslin, Professor, University of California, Davis School of Law

**Chair Miller:**

[Roll was called. Committee protocol was explained.] We have two bills on the agenda this morning. Assemblywoman Daniele Monroe-Moreno, Ms. Beth Schmidt, and Mr. Shad Matheny, who is with us from Las Vegas, will present Assembly Bill 272. Members, please work off the latest amendment during the bill presentation. I will open the hearing on Assembly Bill 272.

**Assembly Bill 272: Establishes provisions relating to mail theft. (BDR 15-800)**

**Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1:**

We are here today to present Assembly Bill 272. With the Chair's permission, we will provide a brief background of information, a summary of the bill, and what I hope to be the last amendment [[Exhibit C](#)] to the bill.

Mail theft is a serious crime that can have significant consequences for individuals, businesses, and organizations. Mail often contains sensitive personal information such as bank account details, credit card statements, and social security numbers. If this information falls into the wrong hands, it can be used for identity theft. Mail theft also results in financial losses for individuals and businesses. For example, checks or credit card payments stolen from the mail can be cashed or used to make unauthorized purchases. There are also legal

documents sent via mail such as contracts, deeds, and court documents that can be stolen, leading to legal disputes and financial losses.

The disruption of services for businesses and organizations that rely on mail for communications with clients, suppliers, and customers can affect their operations. Finally, we as a body made a policy decision to go to mail-in ballots. While we have not seen a large amount of fraud concerning our elections, knowing that those ballots are in the mail with personal identifying information lets A.B. 272 take care of the problem before we see it coming.

Both federal and state laws play an important role in preventing and prosecuting mail theft. Federal laws provide a foundation for addressing mail theft issues involving U.S. Postal Service mail, while state laws can provide broader coverage to address mail theft issues involving all mailboxes. This is the intent of A.B. 272.

As you know, we have submitted an amendment [[Exhibit C](#)] this morning. With your permission, I will turn the presentation over to Mr. Matheny in Las Vegas and then to Ms. Schmidt in Carson City.

**Shad R. Matheny, Postal Inspector, United States Postal Inspection Service:**

The United States Postal Inspection Service investigates crimes involving the U.S. Postal Service, its employees, and the U.S. mail. One of our primary focuses here in Nevada is the theft of U.S. mail and the subsequent identity theft and other financial crimes associated with it. Nevada is currently ranked fifth in the nation in identity theft reports and third in fraud reports. These combined frauds and scams resulted in more than \$100 million in losses in the state in 2022. Nevada also experiences one of the highest incidences of volume mail theft in the country. Individuals involved in mail theft are nearly always also involved directly or indirectly in identity theft. A 2020 report by the National Broadcasting Company based on Freedom of Information Act (FOIA) request data showed that mail theft reports increased by 600 percent from 2017 to 2020. A *Las Vegas Review-Journal* article in 2022, also based on FOIA data, showed from February of 2021 through March of 2022, there have been 3,124 complaints about stolen or missing mail just in Las Vegas.

The federal system generally does not have the resources to prosecute all federal offenses, so they enact thresholds to identify cases appropriate for federal investigative attention. Most simple mail theft-related cases are charged in state court because of this, and those charges are made for some related crime such as forgery or an identity theft-related charge. In Nevada, postal inspectors are authorized under *Nevada Revised Statutes* (NRS) 171.1257 to make probable cause arrests for offenses related to postal matters. However, as there is no mail theft statute, law enforcement officers including postal inspectors are generally only able to charge a financial crime such as forgery or credit card fraud that resulted from the mail theft. These crimes may not even be committed by the same individual that committed the mail theft, and therefore the original act of the mail theft may never even be charged.

A law directly classifying mail theft as a felony violation will enable deputies, police officers, and postal inspectors to charge a felony for possession of or theft of mail, possession of the keys or tools used to illegally open mailboxes, and prying mailboxes open to obtain mail illegally. This will result in an improvement in the way law enforcement is able to prevent identity theft and financial crimes resulting from these types of crimes. Because the sole purpose for and ultimate result of mail theft are serious financial crimes such as forgery, credit card fraud, and identity theft, and these crimes create a serious hardship on residents who then need to remedy or repair issues impacting their financial security or identity, this bill is vital.

**Beth Schmidt, Director-Police Sergeant, Office of Intergovernmental Services,  
Las Vegas Metropolitan Police Department:**

I want to thank Assemblywoman Monroe-Moreno for asking me to present with her. Prior to my current position, I spent three years as a financial crime sergeant with the Las Vegas Metropolitan Police Department (Metro). In that role, I saw the result of mail theft on a daily basis. Metro's financial crimes section investigates between 400 to 500 financial cases every month. A large portion of those cases, including identity theft, fraud, and forgery, stem from mail theft.

How does the crime of mail theft work? Criminals will target residential community mailboxes. Those are the silver mailboxes that you have located on your street. The criminals will either pry the box open or more commonly, they will use stolen postal keys or homemade keys to open the community mailbox. In less than a minute, they open the box, remove all the mail, they throw it into a vehicle, and move on to the next street and do the same thing. They will do this in broad daylight. Eventually they sift through the mail and take the cash, they take the checks, and anything with personal identifying information. One of the things they do is wash the check—that check that you wrote to your niece or nephew or your granddaughter for \$25 for her birthday—they will wash that. They will put another name on it, a different dollar amount on it, and they will cash it with an identification card. They will have manufactured that identification card from a previous mail theft victim.

Some of the ways criminals will use this personal identifying information they obtained through mail theft is they will create credit cards, identification cards, and driver's licenses. They will take out home and car loans. They will lease apartments and they will open bank accounts and utility services. You may ask, How many mailboxes are broken into each day? Well, we do not track that because breaking into a mailbox is not a crime in the state of Nevada. Mail theft is a federal crime. Nevada is a large state, and it is a rural state, and the United States Postal Inspectors only have a handful of inspectors to assist local Nevada law enforcement.

This is why Assemblywoman Monroe-Moreno has brought forth A.B. 272. In the state of Nevada, if law enforcement catches someone breaking into a mailbox, we do not have an NRS statute to charge them with. If we stop a vehicle with a back seat full of hundreds of pieces of unopened mail, we do not have an NRS statute to charge them with. If we recover bags and bags of unopened mail during the service of a search warrant, we do not have an

NRS statute to charge them with. The only NRS statute we have in relation to mail theft is a gross misdemeanor charge for the possession of a burglary tool, and that is what we use for possessing a stolen United States Postal Service mail key or homemade mail key. It is important to note that postal keys are considered so valuable by mail thieves that it is not uncommon for mail delivery people to be robbed of their keys at gunpoint. The keys give criminals access to an unlimited amount of mail, which is really access to an unlimited amount of personal information about people.

When you think of A.B. 272, this is about acquiring and possessing stolen mail, postal keys, and personal identifying information. We have existing NRS for law enforcement to use to charge someone for using that personal identifying information. Assembly Bill 272 is a much-needed tool for law enforcement in Nevada to combat mail theft and help prevent identity theft, fraud, and forgery. We believe A.B. 272 will help address these issues.

**Assemblywoman Monroe-Moreno:**

With your permission, I will quickly walk you through the bill. Section 1, subsection 1 of the bill explains the circumstances under which a person commits the crime of mail theft. This includes: (1) knowingly, willfully, and with the intent to deprive, injure, damage, or defraud another, takes, destroys, hides, or embezzles mail or obtains any mail by fraud or deception; (2) buys, receives, conceals, or possesses mail and knows or reasonably should know that the mail was unlawfully taken or obtained; (3) buys, receives, conceals, or possesses a United States Postal Service key that provides access to certain mail receptacles or a counterfeit device or key designed to provide access to a lock mechanism of such mail receptacles; (4) knowingly, willfully, and with the intent to steal the mail inside, damages, breaks open, tears down, takes, or destroys any mail receptacle.

Subsection 2 provides the penalties for the crime of mail theft. The proposed amendment [\[Exhibit C\]](#) revises the penalties in the bill. The amendment deletes paragraphs (a) and (b) in section 1, subsection 2, thereby removing the reference to the gross misdemeanor and the monetary value. A person who commits mail theft is guilty of a category D felony. Section 1, subsection 3 requires the court to order a person to pay restitution. Lastly, subsection 4 provides definitions. With that, Madam Chair, we will stand for questions.

**Chair Miller:**

Are there any questions from Committee members?

**Assemblywoman Considine:**

I am sure many of us are aware, have been victims of, or live in a neighborhood where this has happened. Section 1, subsection 4, paragraph (a) defines "mail" as a letter, postcard, parcel, package, et cetera. Then on the very last line of the bill, it includes "Postal service means the United States Postal Service or a private common mail carrier." If we are listing parcels and packages—some of those mailboxes have keys where you need to get those parcels and packages out and some people have mailboxes at their house where people put

parcels and packages in—does this include packages that are delivered by, for instance United Parcel Service, FedEx; in all of this verbiage, does this include anything we consider mail?

**Assemblywoman Monroe-Moreno:**

It is our intent with this legislation that it would encompass all mail.

**Assemblywoman Cohen:**

I assume a lot of this is organized crime. Will this bill give the district attorneys the tools they need to charge for the crime when it is organized as opposed to just one person going out and doing this? Are there going to be enhancements? Will this help with that?

**Beth Schmidt:**

In our experience in the Las Vegas Valley, it does not appear to be an organized crime. It tends to be smaller groups doing it. We have not come up against that, but perhaps Mr. Matheny can speak to that.

**Assemblywoman Cohen:**

If I may clarify, I do not mean organized as in the Mob. I mean an organized group of people.

**Beth Schmidt:**

We do not typically see it as large groups. It tends to be a couple of people at a time.

**Assemblywoman Cohen:**

Even with a small group, there are some ways to charge for that organization, not just for the crime itself, but for organizing and then committing the crime.

**Beth Schmidt:**

That might be something more appropriate for the district attorneys to answer.

**Assemblywoman La Rue Hatch:**

I think this is a very important bill, filling a gap in our statute that I did not know was a hole in the statute. I also appreciate going after porch pirates. As I am reading section 1, subsection 1, it says that if you buy, receive, conceal, or possess any key to any lock adopted by the United States Postal Service. A postal worker receives a key when they go out to do their job. I just want to make sure that language is clear enough that someone who is supposed to have that key is not getting caught up in this language.

**Assemblywoman Monroe-Moreno:**

Yes. Part of a postal employee's job and the tools that they need to do their job is to have that key. What we have found is that postal workers are being held hostage by someone to steal that key. The person who steals that key makes copies of the key and sells them to other people who are not supposed to have it and it is not in the operation of their job. We are also finding, and I believe that Ms. Schmidt can attest to this, where people are

stealing postal worker uniforms so when they are in a neighborhood stealing, people do not notice that it is a theft, that the person is a criminal, because they have stolen a uniform which could be years older, but I do not know. I am sure you do not know how often postal uniforms change with that stolen key. It would not be held against anyone in the commission of the normal operations of their occupation.

**Beth Schmidt:**

I personally had a guy delivering mail who did not work for the Postal Service. We did not realize it until afterwards and we just thought he was a contractor. He took everything out of the mailbox right in front of me one day. I had no idea until after the fact when the neighbors put it together. We do see the cobbled together postal uniforms, but unless you work for the Postal Service, you would not know that they are cobbled together. We find them on search warrants as well, and it is a weekly occurrence that we find keys.

**Assemblyman Yurek:**

As a prior law enforcement officer, I can tell you this is very much needed. By establishing this as a specific state crime, would it also help our local law enforcement and prosecutors to bring a charge of conspiracy to commit a crime against a few players to address those concerns?

**Beth Schmidt:**

It is my understanding that we could do that. But in our experience, we tend to see the sort of one-offs, one or two people working together. If we could articulate that, yes, I believe that it would allow us to do that.

**Assemblywoman Hardy:**

I am really happy to see this bill. This happened to us in our neighborhood, and it is scary because you do not know what was in there, and you know that credit card companies send out applications for credit cards and then you have to go through and lock all your credit files. You feel violated. It is hard to catch them because, for instance in our neighborhood, someone did this in the middle of the night and there was a neighbor out there who saw it, but then it is so hard to catch them. You are going around seeing if somebody caught it on their Ring camera or something like that. The most common way you catch these people is you pick them up for something else and then you discover large amounts of mail, and I know there is really not much you can do, but I am just wondering, is that the best, most common way that you catch these individuals?

**Beth Schmidt:**

Yes, like catalytic converters, this is a really quick crime to commit. Oftentimes we will see it on Ring cameras, but at night, it is very difficult to determine who that person is. More often than not—and this is why we put in the possession aspect to this bill—what we come across is someone that will have a backpack full of mail or in the back seat of their car or in a house with bags and bags and bags. What we will see is the sequential order of the mail by address. It will be 3500 West Tropicana apartment 1, and there will be a stack for

apartment 2 and apartment 3, and then it will be 3100 West Tropicana and 3101 Tropicana. When we work with Postal Services, we can determine that these came from the same bulk boxes.

**Assemblywoman Hardy:**

This might be for Mr. Matheny in Las Vegas. Is there coordination? I remember asking our mailman, What do we do? What happens? Do you report this? What happens if the central boxes are broken into? Do they contact law enforcement, or how often do they rekey those boxes? What happens as far as on the postal side?

**Shad Matheny:**

When we receive the reports of mail theft or compromised boxes from the public or from other law enforcement, Postal Service does work to fix, repair, or replace those boxes with higher security boxes and/or higher security keys and locks, if needed. That is pretty much the process.

**Beth Schmidt:**

I will just add that the coordination between the federal entity, Postal Services, and the local law enforcement is quite high. We have the benefit in Washoe County and Clark County of postal inspectors located there, but for some of our rurals it can take a long time until someone can get out to repair that box. The chance of an investigator being able to get out on just one neighborhood box, based on the sheer number of how few employees they have, this gives us a real tool to be able to charge for breaking into that box.

**Assemblywoman Newby:**

I had no idea this was not already on the books. This bill seems to focus on the time in which the person already has the key, goes to the box, steals the mail, is in possession of the mail, but based on your testimony, the robbing of the postal carrier is also of concern. What sort of charges are brought against that and are there any sort of aggravating charges that can be brought? Obviously, they are being robbed at gunpoint, hopefully not harmed, but are there any aggravating charges if they are robbing someone for the purposes of taking a key in order to commit further crimes? How does all that go? And perhaps that is also for the postal office person?

**Shad Matheny:**

The robberies can be charged in either state court or federal court, and they are pursued aggressively in the federal system if there is a robbery of a carrier of those keys. We have charged cases in both venues.

**Beth Schmidt:**

I am not aware of an enhancement at the state level for that, but it would be depending on what the circumstances of the crime were: assault with a deadly weapon, robbery, and depending on the age of the mail delivery person, there might be an enhancement there, but I am not aware of an enhancement at the state level for mail theft or for the U.S. Postal Service.



**Assemblywoman Hansen:**

I need some clarification because I did always understand it to be a federal offense. I am understanding that we need this in statute to enable our local law enforcement to be able to deal with this. Would there be charges both federally and, depending on what was stolen—I was looking up some states—you have both; they have the local laws and then they also bring a federal charge as well. I am assuming there is that ability. To clarify, this would make it a category D felony, if I read the amendment right. It is a felony on the federal level as well. We are matching the federal statutes. Did we leave in if it is not monetary on the local level that it would be a gross misdemeanor? Okay. It is still just a category D. Back to the idea about would there be a federal charge and a local law enforcement charge as well depending on the seriousness of the crime.

**Beth Schmidt:**

We work closely with Postal Services because we have that benefit of their being located in Las Vegas and there are multiple investigators there. What we will do is on some of the cases where we have significant amounts of mail, uniforms, and a significant number of keys, Postal Services will come out to the scene and then the decision will be made by the supervisors in consulting with the Office of the U.S. Attorneys and our district attorneys which is the best case and the best direction to go. But the vast majority of these cases, just based on manpower, are dealt with by local law enforcement. The feds will typically have thresholds, and Mr. Matheny talked about that.

**Assemblyman Gray:**

I was just wondering in the interest of costs and manpower or anything else, if local law enforcement can have the authority to investigate it, but then refer it to feds for charging, prosecution, and let them go off to federal prison and let them absorb the cost on it?

**Beth Schmidt:**

That goes back to the depending on the totality of the circumstances and our being able to put that case together and then working with Mr. Matheny and his team from U.S. Postal Services. Yes, sometimes if the U. S. Attorneys feel we have a good case, then we will take it the federal route.

**Chair Miller:**

With that, we have no further questions from Committee members. I will open it for testimony in support of Assembly Bill 272.

**Dylan Keith, Assistant Director, Government Affairs, Vegas Chamber:**

On behalf of our smallest business members who truly rely on mail security, we are very much in support of this bill, and we would like to thank the sponsor for bringing this piece forward.

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

The Nevada Sheriffs' and Chiefs' Association is in support of Assembly Bill 272 and would like to thank Assemblywoman Monroe-Moreno for bringing this bill forward. Mail theft continues to be a significant challenge for law enforcement across Nevada, leaving behind a tremendous impact for those victimized throughout the state. As stated during this presentation, mail theft often leads to identity theft, account takeovers, and credit card fraud amongst other crimes. Victims often face severe credit damage and spend months or years trying to fix the damage that was done.

This bill gives local law enforcement the ability to go after mail thieves with local charges rather than rely on postal inspectors who are often stretched thin while attempting to cover large, assigned territory to make time to come out and assist in investigations. This is especially challenging in rural counties in Nevada as those postal inspectors are usually not able to make it out to those locations with the larger caseloads being in Clark and Washoe Counties. As a former financial crimes investigator, I have served search warrants at a number of locations and located multiple trash bags of stolen mail only to be told that it did not meet federal thresholds for prosecution. This is a local problem that affects citizens and businesses of Nevada. The Nevada Sheriffs' and Chiefs' Association would respectfully request that you join us in supporting A.B. 272.

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

We are in support of A.B. 272. It does fix a hole in our statutes with respect to this type of information. We do currently have possession of personal identifying information crimes, but those crimes really focus on the intent; in other words, the reason that the defendant is possessing those particular pieces of information. That could be a name, a social security number, and they could be possessing it to create a false status for themselves. That would be a category E felony. Or they could be possessing that information to commit some type of fraud. I, as the prosecutor, would have to prove beyond a reasonable doubt that one of those reasons is why they are possessing the mail. Oftentimes what we see, as the testimony alluded to, is just people who possess a big bag of mail, and we do not quite know why they are possessing it. It could be for any of those reasons, but I cannot necessarily prove that beyond a reasonable doubt. What this does is it plugs a hole in that gap by saying, if you possess it and I can prove that you knew or reasonably should have known that it was stolen, then the crime of mail theft would have been committed.

With respect to Assemblywoman Cohen's questions, we do have a gross misdemeanor conspiracy, if we can prove that people were acting in concert towards the commission of a crime. If I have a forgery lab, in other words, we have mail possessed in conjunction with card readers or embossing machines, I could potentially prove a forgery lab charge. For the higher-level crimes, we do have racketeering, but racketeering is an extremely difficult crime to prove. With that, Chair Miller, we are here in support of A.B. 272.

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

We are in support of Assembly Bill 272. I am definitely dating myself, and some of us in the room may remember when grandma or grandpa would send you those nine crisp dollar bills on your ninth birthday. Sadly, those days are over. I applaud the Assemblywoman, and with Metro's support, for putting this together. This is something that needs to come back out, and with the legal teeth that we have on this now, hopefully these crimes will not be committed anymore. We are in support.

**Richard P. McCann, representing Nevada Association of Public Safety Officers:**

I also am a member of the Nevada Law Enforcement Coalition. I personally live in an environment where our community mailbox was ransacked, broken into, and it took over four months for them to finally get it fixed. I understand that my mail carrier said 31 of them have been hit in that postal area within a series of about three days. It is a bad situation. There are a lot of older people, like me, who live in my area. They have social security checks and other stuff coming in, maybe they are the one sending the \$9, but there is also money coming in. We have to stop this. My people in my neighborhood, they wanted to find the guy and put them before a firing squad, but we will take a category D felony for now. We ask that you support this bill.

**Emily Persaud-Zamora, Executive Director, Silver State Voices:**

We are in strong support of A.B. 272. Every day, the United States Postal Service and private mail carriers handle sensitive information including ballots during election cycles. While the majority of mail is successfully delivered to its intended recipient, mail theft remains a significant issue which can lead to serious consequences for individuals and businesses. In Nevada last year, in mid-October, the Las Vegas Metropolitan Police Department issued a warning via Twitter stating, "Mail theft is once again on the rise. Thieves are going after mail-in ballots, credit cards, et cetera. So please pick up your mail ASAP every day."

Given the importance of the mail system and the potential risks associated with mail theft, it is essential to take action. Assembly Bill 272 is a positive step towards addressing these concerns. This bill provides additional protections for individuals and businesses by strengthening penalties for mail theft. Nevadans continue to rely heavily on mail for important services including receiving social security checks, medications, and voting by mail. By taking action to address this issue, we can help ensure that the mail system remains safe and reliable for all Nevadans. We urge your support.

**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.] The bill's sponsor has indicated that she does not wish to make concluding remarks. With that, I will close the hearing on A.B. 272.

Next, we have Assembly Bill 371, presented by Assemblywoman Cohen, Ms. Surratt, and Ms. Joslin. I will open the hearing on Assembly Bill 371.

**Assembly Bill 371: Makes various changes relating to parentage. (BDR 11-140)**

**Assemblywoman Lesley E. Cohen, Assembly District No. 29:**

Joining me in Carson City is attorney Kimberly Surratt who has practiced law for more than 20 years. Ms. Surratt has immersed herself in reproductive law, parentage, and adoption, and she has extensive knowledge in family law, parentage law, and surrogacy. She is a past president of the Nevada Justice Association, having served on their board since 2013. As an unpaid lobbyist since 2004, she has worked on bills such as Nevada Domestic Partnerships, and the Uniform Collaborative Law Act.

Also joining us via Zoom is Professor Courtney Joslin of the University of California, Davis School of Law. Professor Joslin is a leading expert in the areas of family law and relationship recognition with a particular focus on same-sex and unmarried couples. She has won multiple awards for her legal scholarship, and she served as the Reporter for the Uniform Parentage Act for the 2017 update.

As a reminder, we have heard a little about the Uniform Law Commission (ULC) before, but it was established in 1892 and it aims to provide the United States plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands with well-researched and drafted model acts to bring clarity and stability to critical areas of statutory law across the jurisdictions. The ULC promotes enactment of uniform acts in areas of state law where uniformity is desirable and practical. The ULC consists of approximately 350 commissioners, each appointed by the government of each state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Every ULC commissioner must be an attorney. Commissioners also often concurrently serve as legislators, judges, or legal scholars. In the realm of family law, Nevada has already passed the Uniform Premarital Agreement Act, the Uniform Deployed Parents Custody and Visitation Act, the Uniform Interstate Family Support Act, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Child Abduction Prevention Act.

As you have probably heard me say, in my day job I practice family law. Unfortunately, our family law statutes of Nevada are not particularly well organized or up to date. They are in some ways cobbled together. They also do not always consider the way families are created these days. The Uniform Parentage Act (UPA) does that. The Uniform Parentage Act was originally promulgated in 1973, and it removed the legal status of illegitimacy and provided a series of presumptions used to determine a child's legal parentage. When the UPA was revised in 2002, it augmented and streamlined the UPA, and it added provisions permitting a nonjudicial acknowledgment of paternity procedure that is the equivalent of an adjudication of parentage in a court, among other things. It also included provisions governing genetic testing and rules for determining the parentage of children whose conception was not the result of sexual intercourse.

In 2017, UPA was again updated and, as a Uniform Law Commissioner, I was honored to serve on the drafting committee that worked for months and months on updating it again with Professor Joslin as the Reporter. Currently seven states have enacted the 2017 UPA updates. Nevada is one of 5 state legislatures which have introduced the 2017 UPA updates, and 14 states have enacted prior versions of UPA.

Before we go into the bill, I just want to talk a little bit about the *Nevada Revised Statutes* (NRS) chapters that are in the UPA. Mostly, the bill is in NRS Chapter 126, which is parentage. Very little of the bill deals with NRS Chapter 125, which is where custody, divorce, and child support are. Parentage is how we determine who is a parent of a child. If we have a married man and woman, parentage is usually pretty simple. However, if you have surrogacy, unmarried parents, or a same-sex couple, it becomes a little more complicated. With A.B. 371, the Uniform Parentage Act works to simplify the process for the families thereby keeping them out of court to address those issues.

I am going to walk through the bill, and Ms. Surratt will speak about the need for UPA Nevada, while Professor Joslin will answer any technical questions. I will do a very brief walk-through of all the sections. Sections 3 through 26 relate to definitions. Section 27 notes that any reference to the mother or father includes a parent of any gender.

Sections 28 and 29 note sections 27 through 91 are UPA and do not affect parental rights under the law beyond the act. Section 31 is jurisdictional. Section 32 is related to disclosure of information. Section 33 states what applies to the act for a mother, applies for a father, and vice versa as applicable. Section 34 states how a parent and child relationship is established. Section 35 notes a parent and child relationship extends equally to every parent and child regardless of the marital status of the parent. Section 36 states a parent and child relationship applies for all purposes. Section 37 has the parental presumptions. Those presumptions are rebuttable. Section 38 references the acknowledgment of parentage to establish parentage of a child. Section 39 gives details regarding the acknowledgment of parentage.

Section 40 addresses the signing of a denial of parentage by a presumed or alleged genetic parent. Sections 41 through 50 address acknowledgment and denial of parentage forms including rescission. Section 51 permits the State Board of Health to adopt necessary regulations regarding the acknowledgment and denial of paternity. Sections 52 through 57 go back to definitions, and begin the genetic testing section, which goes through section 68. Section 69 states that matters to adjudicate parentage are governed by the *Nevada Rules of Civil Procedure* except as otherwise addressed.

Section 70 lists who can maintain a proceeding to adjudicate parentage. Section 71 lists who gets notices of cases. Section 72 details jurisdiction. Section 73 details venue. Section 74 has to do with the report of genetic testing. Sections 75 and 76 provide that a proceeding to determine whether an alleged genetic parent or presumed parent, respectively, is a parent of a child may be commenced after the child becomes an adult, only if the child initiates the proceeding. Section 77 lists who can commence a proceeding to establish parentage.

Section 77 of the bill also authorizes a person who claims to be a de facto parent of a child to commence a proceeding to establish parentage of the child if the child is alive and less than 18 years of age. It provides that a person who claims to be a de facto parent must be adjudicated as a parent of the child if there is only one other person who is a parent or has a claim to parentage of the child and the person who claims to be a de facto parent can demonstrate certain facts by clear and convincing evidence. Section 78 addresses the rules if there is a challenge and there is an acknowledged parent. Section 79 addresses a challenge to adjudication when a child has an adjudicated parent.

Section 80 lists more proceedings to adjudicate. Section 81 authorizes the court to adjudicate a child to have more than two parents if the court finds that failure to recognize more than two parents would be detrimental to the child. Section 82 allows for temporary child support. Section 83 permits the combination of proceedings. Section 84 permits the commencement of proceedings prior to the birth of the child. Section 85 permits, but does not require, a minor child to be a party and requires a guardian ad litem in certain situations. Section 86 requires adjudication of paternity without a jury. Section 87 addresses dismissal without prejudice. Section 88 addresses fees and the child's name change. Section 89 addresses who is bound by an acknowledgment.

Section 90 refers to the importance of uniform law. Section 91 has to do with signatures. Section 92 relates to the death of a parent, when a child is conceived by assisted reproduction, during the period between the transfer of the gamete or embryo and birth of the child. Section 93 addresses termination of gestational agreements. Sections 98 through 106 make various other changes to the provisions of existing law concerning assisted reproduction and gestational surrogacy. Section 99 includes that a donor is not a parent of a child conceived by means of assisted reproduction, and the consent of the spouse or domestic partner of a donor is not required for them to be a donor.

Section 101 addresses that failure to consent on the record does not preclude a finding of parentage if there is clear and convincing evidence of an agreement under certain circumstances. Section 107 addresses the requirements of an enforceable gestational agreement. Section 108 addresses the impact of marriage or domestic partnership of the gestational carrier on the gestational agreement. Section 109 addresses noncompliance with the gestational agreement. Section 135 requires the Legislative Counsel Bureau to make appropriate language changes. Sections 94 through 97, 110 through 133, and 136 make conforming changes to reflect the revisions made to existing law because of the establishment of the provisions modeled after those of the UPA and in sections 28 through 91, and the repeal of unnecessary provision is in section 136. With that, I will turn it over to my colleague.

**Kimberly M. Surratt, representing Nevada Justice Association:**

It has taken us a couple of sessions to get to this point, and you will probably understand when you look at the depth of this bill, because the drafting effort to the vetting effort to get where we are today was a significant task. Nevada was one of the first adopters of the Uniform Parentage Act from 1973. Honestly, it is still intact. That is what is there. Over the

years, I have come in front of this body and made numerous changes through numerous bills to modernize some of our parentage statutes, adopting bits, pieces, and parts of the newer versions of the UPA, because I did not have quite the endurance yet to go through this drafting effort to do the whole thing all at once.

Over the years, I have come in front of this body for gender neutralizing on parentage, to ask for updates for assisted reproduction laws, and in 2013, we adopted pretty much all of that. There are a few minor changes to reproduction law still in this bill that we are asking to be adopted from the newest version. Nevada has been on a roller coaster with family law, and you may be asking yourself, Why on earth would we, as family law practitioners, want to have to comply with this much crazy logistics and procedures. We are thrilled; the family bar is thrilled. We are excited because a lot of this we do by just arguing in front of our judges and have nothing to hang our hat on and hope for.

The primary situation this helps with is, somebody is put down as the father and believes he is the genetic father, raises the child for ten years, then the genetic father comes out of the woodwork—probably through Ancestry.com or 23andMe.com, because that seems to be a lot of what my practice sees these days. We are now in a conundrum with the court about what to do with the person that is now suddenly known as a genetic father. There are just so many variations to that story as to how it comes in front of the court, and the court has to struggle with, Do we remove this child now to a parent the child did not know for ten years who suddenly is a genetic father? The prior genetic father, what do we do with him; does he get any rights? Often, he is relegated to a chapter we call the third-party visitation chapter, which is a very limited amount of time with the child, because with the constitutional rights as a parent, you get a lot more as a parent than just a third party who has visited the child.

As an example, I had a grandparent case where they ended up with one weekend a year out of the entire trial in front of the court. If you have been raising a kid for ten years, you do not want to be relegated one weekend a year obviously. But that is just one primary example of a lot of the reasoning behind this bill. I know it is a lot, and I know there is probably a lot of confusion as to why things are in here. But the big picture is, it is to give us—the attorneys, and the courts, the judges—the opportunity to decide what is in that child's best interest parent-wise, who that child recognizes as a parent, who that child needs to continue a relationship with, and also to ensure that parents on the front end are given a fair opportunity to show they are parents.

All our DNA genetic testing statutes are really old, and as you can imagine, science has changed over time and really quickly. There is a lot of language in here we did not have, and now we do if we pass this. It modernizes us, it gives us the opportunity to get in front of the court and just argue what is best for that child in terms of parentage. With that, let the questions roll, I am sure.

**Chair Miller:**

Thank you for that. We do have a few questions.

**Assemblyman Gray:**

It is funny, you hit on where I was going with it. You have a parent that raises a kid for ten years thinking it is their own, you know, maybe because the mother wants them to think it is or they believe it is. Will this address and give them further rights? On the converse, if they were duped, will it allow them to step away?

**Kimberly Surratt:**

Yes. It will do both. The beauty of that is, it will give some personal rights to that person who thought they were a parent and they are not. Also, there is a provision in here regarding if it was fraud and what we can do with fraud. If you have been raising the child and holding the child out as your own for more than two years, your standing is solid. But there is some language in here that assists with that. The duped part of it, the fraud part of it, we have not had anything great to hang our hats on for that other than we have had a little bit of case law and a little bit of assistance on the fraud, on that end of it, but nothing that helps us within a family law context specifically.

**Assemblyman Gray:**

I have to say, any parent that thinks they were a parent for no matter how long they acted as a parent and they want to step away, they are dirtbags.

**Assemblywoman Newby:**

I was looking at section 107 regarding subsection 6, the gestational carrier. I was wondering, in a contract between the gestational carrier and then the parents, does this hold when all three parties are in Nevada? What about when a gestational carrier is not located here or parents are not located here, or even when perhaps the gestational carrier is in a different country?

**Kimberly Surratt:**

That is the easiest question I could possibly answer. That is almost one hundred percent of my practice at this point. There are huge sections of the surrogacy statutes that are not included in this bill because we already adopted the changes. You are not seeing those which would probably fill in some of those holes for you to notice. We do have parentage for a gestational carrier agreement, which a lot of people call a "surrogate." We have jurisdictional rules that say we can take jurisdiction if the intended parents reside here, the carrier resides here, the child is born here, the child is expected to be born here, or the fertility treatments that caused the pregnancy occurred in the state of Nevada. We have pretty broad jurisdiction where we can hug arms around that. We will have intended parents who reside in other states and other countries utilizing a gestational carrier in the state of Nevada.

**Assemblyman Yurek:**

I do not know this area of law very well, but it is definitely interesting to read through some of this stuff. As I am looking at section 101, it says specifically the person who intends to be a parent of a child born by assisted reproduction has to be in a record signed by the person giving birth to the child and the person who intends to be the parent of the child. A failure to



consent to that type of record does not preclude a finding from the court. I see in section 101, subsection 2, paragraph (a), it talks about clear and convincing evidence, but more specifically, in paragraph (b), it says "During the first two years of the child's life," and you are adding the language "including any period of temporary absence," they "resided together in the same household with the child and openly held out the child as their own." To try to clarify that, I guess it is a two-part question. Can you confirm what is the record? I mean, is it a contract that is drafted up? How formal does that record need to be? Then what is the purpose of adding that specific language of "including a period of temporary absence?"

**Kimberly Surratt:**

The assisted reproduction statutes are not just surrogacy, it is also egg donation, embryo donation, and sperm donation. It can be even that an unmarried couple who do not want to get married but want to have a child and are utilizing fertility treatment. We do agreements for parentage; we do donation agreements that say the donor is not a parent and the recipient is a parent. There are multiple things we have seen over time, such as that "holding out," or that temporary, not being in the home. Actually, you are going to hear this when I do the adoption rewrite during the same session too, where maybe the child is in the hospital, not really in the home. We have had judges get so particular on that "in the home" part for us and other provisions and other statutes. Military could also be parents not necessarily there. There could have been a custody battle that the child was not in the home for a bit until they figured out exactly what was going on for that.

In family law, we need that ability to flex with the facts and circumstances; our families are so different. I could go on for hours with examples of strange moments and things that we just do not need to be tied into a judge saying a hundred percent in the home at all times.

**Assemblywoman La Rue Hatch:**

Thank you for diving into this really important work and updating our statutes. I also had a question on section 107, subsection 6. I understand surrogacy is a very tough section of law, and I totally agree with a right of a person over their own body. My question is though, does that mean that the gestational carrier could choose to drink or smoke or do something that harms the fetus under this? I know that is a gray area.

**Kimberly Surratt:**

It is the same situation again, where you are not seeing all the rest of the gestational carrier agreement surrogacy statutes that are in here because we did not modify all of them. There are other provisions that have restrictions on stuff; for example, we do not want you to do meth while you are pregnant, preferably. That is still covered within our other statutes. We already have that the carrier can choose her own obstetrician in consultation with the intended parents.

My pitch to intended parents when they start worrying about, What is she going to do with her health? What if she picks a really bad doctor? Well, if you are a woman who is pregnant and the doctor creeps you out, you do not have to go to that doctor. You get to pick. It is

a very intimate relationship. Anybody who has had a child would tell you. With big medical decisions, she still has autonomy over her body. We do not get to interfere with her autonomy.

When the child is born, the intended parents have the right to make all the medical decisions for the child. We do try to contract around that some to get everybody on the same page, with the same mindset, with a meeting of the minds, about behavioral decisions such as doing illegal drugs while pregnant or drinking, but it is a contract. It is not necessarily enforceable from a constitutional perspective. I cannot come and force you to drink one thing and not another, whether you are pregnant or not. It is the same thing here. These are the really big decisions in this paragraph; whether to have the cesarean section, whether to transfer multiple embryos—which is a big one.

I think everybody knows about Octomom, where the doctor transferred too many embryos. That is a big no-no in the reproductive world now, and in the gestational carrier surrogacy world. Many of our surrogates say they only want a single embryo transfer, and a lot of our doctors now say they will only do one when the embryo is in such poor quality that maybe two would be justifiable. Beyond two, that is bad behavior to have it in the contract. But we want her to have the control over whether it is one or two, and she should have a right to decide. Now, a single embryo could split, and she could be pregnant with twins. We go over that, we discuss that, but that is also the reason many carriers will pick a single embryo transfer. Intended parents will tend to want to control all factors, but that is a huge impact on her body; carrying twins is not easy at all. We want her to have that control.

**Chair Miller:**

Assemblywoman Cohen, did you have anything else to add?

**Assemblywoman Cohen:**

I wanted to see if Professor Joslin wanted to add anything.

**Courtney G. Joslin, Professor, University of California, Davis School of Law:**

No, I will just add my thanks to Assemblywoman Cohen for doing the incredible work to introduce this bill. I know it was a lot of work, and I am happy to answer any additional questions that arise. Thank you for your consideration.

**Chair Miller:**

With that, we do not have any additional questions from Committee members. Is there anyone 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 would invite the presenters back to the table for any concluding remarks.

**Assemblywoman Cohen:**

Thank you to the Committee for hearing the bill and for reading it. I know it is a long one. It was a lot of work. Thank you to Professor Joslin for your work on UPA and for being here

today. And thank you as well to Ms. Surratt for all your work over the years. Ms. Surratt has done so much for family law in this building for our state over the last several years that was unpaid and just to make sure that we had better laws for our families in Nevada.

**Chair Miller:**

I will close the hearing on Assembly Bill 371. I will open it for public comment. [There was none.] We have finished our business for the day. A reminder that we will be back here at 8 a.m. tomorrow. This meeting is adjourned [at 9:12 a.m.].

RESPECTFULLY SUBMITTED:

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Traci Dory  
Committee Secretary

APPROVED BY:

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Assemblywoman Brittney Miller, Chair

DATE: \_\_\_\_\_

## **EXHIBITS**

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a proposed amendment to Assembly Bill 272, submitted and presented by Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1.