MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-second Session
March 24, 2023

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:02 p.m. on Friday, March 24, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Blain Jensen, Committee Secretary

OTHERS PRESENT:

Max Grinstein, Nevada Youth Legislator, Senatorial District No. 15
Stella Thornton, Nevada Youth Legislator, Senatorial District No. 16
Sheryl Samson, Return Strong!
Nick Shepack, Fines and Fees Justice Center
Jodi Hocking, Executive Director, Return Strong!
John J. Piro, Clark County Public Defender's Office
Tonja Brown, Advocates for the Inmates and the Innocent
Hana Fahmi, Children's Advocacy Alliance
Pamela Browning, Return Strong!
Brigid Duffy, Clark County District Attorney’s Office

Avon Hart-Johnson, President, DC Project Connect
Denise Bolaños
Chris Cavallo
James Jones, Inspector General, Nevada Department of Corrections
Wiselet Rouzard, Americans for Prosperity Nevada
Mary Walker, Douglas County; Lyon County; Storey County
Jennifer Noble, Nevada District Attorneys Association
Stephen Wood, Nevada League of Cities and Municipalities
Keith Lee, Nevada Judges of Limited Jurisdiction
Marc Schifalacqua, Henderson City Attorney's Office
Carly Helbert, Las Vegas City Attorney's Office

CHAIR SCHEIBLE:
We begin the meeting with the introduction of Bill Draft Request (BDR) 1-795.

BILL DRAFT REQUEST 1-795: Revises provisions relating to juveniles. (Later introduced as Senate Bill 382.)

SENATOR STONE MOVED TO INTRODUCE BDR 1-795.

SENATOR OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR DONDERO LOOP WAS ABSENT FOR THE VOTE.)

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VICE CHAIR HARRIS:
We will open the hearing on Senate Bill (S.B.) 234.

SENATE BILL 234: Revises provisions governing communications with offenders. (BDR S-810)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):
It is my pleasure to come before you today and present S.B. 234. I am joined by Nevada Youth Legislator Max Grinstein. He will be doing the bulk of the presentation because this bill is his idea. Senate Bill 234 facilitates communication between people who are incarcerated in the Nevada Department

of Corrections (NDOC) and their children. The bill has a conceptual amendment (Exhibit C).

Youth Legislator Grinstein has done excellent work on this bill and has information to share with the Committee. Before he does the bill presentation, I will give a summary of the bill as it is written. Mr. Grinstein will speak more to the amendment.

Section 1 says that we are going to create a program. The conceptual amendment describes the funding of the program that allows for calls from the people who are in custody at NDOC to their children to be free of charge. The Director of the NDOC would be allowed to apply for and accept grants or gifts to conduct the program and adopt any necessary regulations to administer it. The bill makes clear that it does not authorize communications otherwise prohibited by law, court order or NDOC policy. It also requires the Department to submit a report and any recommendations regarding the program to the Legislative Counsel Bureau by January 1, 2025.

Section 1 makes clear that children are under the age of 18, and communication services could include Voice over Internet Protocol or a telephone call. Section 2 contains the effective date of the bill, July 1, 2023, to June 30, 2025, by which time we hope to have a well-established program for providing better communication between people who are incarcerated and their children. Youth Legislator Grinstein will talk more about the bill's origins and the details.

MAX GRINSTEIN (Nevada Youth Legislator, Senatorial District No. 15):
I am a junior in high school at the Davidson Academy in Reno. Senate Bill 234 provides for the creation of a pilot program to provide free phone calls between incarcerated parents and their children. I am not presenting today as someone who has personally been impacted by the problem this legislation endeavors to solve. Instead, I am presenting as someone who has engaged extensively with incarcerated people over the past two years to learn about their perspectives.

One of those perspectives comes from Juan Turner. Juan is one of the 600 incarcerated people across 35 states, including Nevada, whose work has been published by the Prison Journalism Project where I have worked as an intern for the past two years. This project trains and publishes incarcerated journalists with the goal of helping to illuminate the often-murky world behind bars. What really speaks to me about my work at the Prison Journalism Project

are the personal stories that people share with us, the personal anecdotes and how people allow us to see behind the curtain.

To that end, I want to share Juan's story with you today. This story appeared in Mr. Turner's August 2022 article. Juan shares the joy of his eight-year-old daughter's visits to prison punctuated by long bear hugs when the bell rings to mark the five-minute limit. His story shows us that the bond of parenthood transcends prison walls. But it is not all good. He let us know in a loving way that his daughter's incessant requests during these visits to have more allowance money to buy dolls can get old, as I am sure the members of the Committee who are parents will agree. He also let us know the brief 90-minute visits he has with his daughter and the infrequent and expensive 15-minute phone calls they have together are not sufficient to foster the kind of relationship that he wants with his daughter and certainly not the kind of relationship that his daughter deserves to have with him. Juan writes that:

> These brief moments of communication are highlights of our lives. It confirms the theory that pleasure never lasts long. We get so caught up in each other that we sometimes forget we are on the clock. If only we had more time.

If you are interested, I have shared several other stories in the Prison Journalism Project that deal with incarcerated parents through a resource list (Exhibit D). My point in bringing in Juan and his daughter is not to focus specifically on them as individuals but instead to use them as an entry point to the central thesis that underlies S.B. 234 as an idea and as a piece of legislation before the Senate Judiciary Committee. Calls between incarcerated parents and their children are vitally important for both parent and child.

In our current system, there are structural barriers related to costs standing in the way of incarcerated offenders in Nevada who have the right to maintain contact with their children unless otherwise prohibited from doing so, pursuant to *Nevada Revised Statutes* (NRS) 209.42305. That law recognizes the importance of incarcerated parent-child relationships and seeks to encourage them. Unfortunately, once we get into the practical real world, it is not always so easy and so straightforward.

Nevada families are paying exorbitant rates to our contracted phone operator, working out to around 14 cents per minute for a collect call and around

11 cents per minute for a prepaid call. Over the course of a year of 30-minute weekly calls, costs can total well over hundreds of dollars. That does not consider families who have multiple children or that the nature of incarceration causes many of these families to have only one breadwinner. What is especially pernicious in this regard is that a portion of those high rates is then being returned to the State as a kickback, which essentially means that Nevada is taxing children's abilities to speak to their parents behind bars.

There are real world consequences to these barriers being placed between parents and children. Academic research proves that phone calls have benefits for children, for parents, for the society at large and for the prison system. The research found that frequent calls were correlated with increased educational attainment and grades for children as well as decreased behavioral problems.

From the perspective of the offender, there was a 2020 study, Exhibit D, that noted frequent contact with family members of the incarcerated serves to reduce recidivism rates, postincarceration. The research is conclusive. By putting a little bit of effort into the issue of incarcerated parents and children, we can set the stage for future success.

Nevada would not be the first jurisdiction making progress and promoting incarcerated parent-child relationships. In 2019, the New York City Council voted to make all calls between people on the outside and offenders in its jails and detention facilities free. That resolution was followed in the past two years by similar laws in Connecticut and California. This week, the Florida Legislature voted to make appropriations for a pilot program to provide free calls to offenders. As compared to those pieces of legislation, S.B. 234 is a targeted and focused solution to the problem that we have outlined by establishing a pilot program to provide free calls between incarcerated parents and their children.

I would like to walk the Committee briefly through the provisions of the bill as well as how the conceptual amendment slightly alters those provisions. As Senator Scheible alluded to in the introduction, this is a concise and straightforward piece of legislation starting from the first provisions.

Section 1, subsection 1 outlines the intent behind the pilot program, namely that it should be intended to foster long-term and sustainable connections between incarcerated parents and their children under 18 years of age.

Subsection 2 is the bill's most important aspect. How are we going to pay for it? The bill authorizes the Department to apply for gifts, grants, donations, bequeathments and other voluntary donations to cover the cost of the program. However, in conversations with various Legislators, Committee members and other stakeholders, we concluded that it was not sustainable in the long term to have the bill's only funding source be so uncertain. What we are proposing in the conceptual amendment is to authorize the Department to draw from the Offenders' Store Fund, which is a special revenue fund established pursuant to NRS 209.221. Neither of these funding options would have a fiscal impact on Nevada taxpayers. Donated money and grants would not cost any tax dollars. The Offenders' Store Fund is a preexisting special revenue fund—with a $14 million surplus—raised from the Department's sale of things in the commissary and phone calls, not from any tax revenue. There would not be an impact on Nevada taxpayers for implementing this pilot program.

Subsection 5 instructs the Director of NDOC to submit a report to the Eighty-third Session of the Legislature about the successes of the pilot program and suggestions for improvement. We propose in the conceptual amendment to make some of those reporting requirements clearer.

Subsection 6 is definitional. We propose amending the bill to account for the potential use of video visitation. Assembly Bill (A.B.) 35 is pending and will provide offenders in Nevada access to tablets enabling video calling if it is approved. This amendment puts video calling within the intent of S.B. 234 and would be provided free to the children of offenders.

ASSEMBLY BILL 35: Revises provisions governing the access of offenders to telecommunications devices. (BDR 16-261)

During the final few minutes of the presentation, I want to answer the most important question about any piece of legislation. Why should you support it? The answer to that underlies any other answer—it is about families. This bill is about the family unit. It is about strengthening family bonds and showing that even if a family is separated by prison walls, the strongest bond in the world is still between a parent and child. Juan Turner's daughter might not fully understand why her father is in prison, but she does understand how much he loves her. That feeling of love stays with her even though her father cannot be with her 24/7. Good things come from fostering and promoting relationships between incarcerated parents and their children.

SENATOR OHRENSCHALL:
I have talked to children whose parents are incarcerated and often the children feel abandoned. They feel like their parents made choices that took them away. You talked about studies that show less recidivism when there is better communication between the incarcerated and their children. If this bill passes in Nevada, will we have better communication between incarcerated persons and their children? Will there be better outcomes for children such as doing better in school and having less chance of trouble with the juvenile justice system?

MR. GRINSTEIN:
Not one piece of legislation or any one pilot program that we can introduce will completely alleviate the burden and emotions that Nevada children feel when their parents are incarcerated. The nature of incarceration is challenging for youth. We are trying to make some strides toward lightening that burden, which is what S.B. 234 endeavors to do.

SENATOR STONE:
The bond between a parent and a child is one of the most important bonds. It is unfortunate that, sometimes, would-be criminals do not think about the consequences of their actions until after the actions have happened, and they find themselves in prison and their children are suffering. The bond needs to be maintained. I support your idea.

I am concerned that this may require some public funding. Has cost been an impediment to the parents talking to their children? Only a certain amount of infrastructure in our jails and prisons allows for our convicts to have the conversations and relationships. So how are we going to fill the demand for talking to family, which is going to increase? I hope it does. How do we ensure the appropriate infrastructure so that we do not turn people away? How do you see that the level of prisoner will be prioritized to make these important phone calls?

MR. GRINSTEIN:
There are two perspectives in which we can look at your question. Regarding the accessibility of phone calls, there is only so much infrastructure, and we are looking to increase the use of that infrastructure. From another perspective, the status quo is that the State is charging quite high rates to offenders and to the families of offenders to stay in contact with their family. Even if this bill does not serve to promote one more call and even if the system is at capacity, we

should still be lessening the burden of the cost of incarceration being passed on to families along with making the calls that do exist between children and their incarcerated parents more accessible and less expensive.

SENATOR STONE:
All telephone conversations from a convict to anyone are recorded. Will these calls continue to be recorded?

MR. GRINSTEIN:
Yes, that is my understanding.

SENATOR STONE:
Here is an idea. It will not be a part of this bill, obviously, but I am sure you will be speaking with the directors of our prison system. If cell phone use can be monitored, this would decrease the cost for the prison system and allow for greater participation and convicts being able to see their families.

SENATOR SCHEIBLE:
To Youth Legislator Grinstein's credit, we did reach out to NDOC. If the prisons do switch to the tablets instead of phone calls, the cost of a phone call will decrease exponentially, and the availability of them will increase exponentially. That is a partial answer to your question.

SENATOR HANSEN:
My question is about the Offenders' Store Fund and $14 million. If I remember, those funds are individual accounts, are they not? Does each prisoner have an account or are there different funds?

MR. GRINSTEIN:
Each offender has a personal account to cover things like commissary, buying chips from the canteen, et cetera. But this Offenders' Store Fund is a separate special revenue fund, established pursuant to NRS 209.221. This bank account the NDOC owns is funded by profits from commissary, phone calls and other sources. This is not an individualized fund as much as it is a preexisting account in the Department.

SENATOR HANSEN:
That account is at least partially funded by the things they are charging like the use of the phones. If the calls to their children are free, will that cause the

amount of money in the account to drop? Is there enough money in the system? I have no idea how many calls we are talking. But while we are providing free calls for the inmates to their families, there still must be a cost because an independent contractor provides the service.

MR. GRINSTEIN:
I will emphasize that we are not trying to make all calls free. Calling revenue can still go into the Offenders' Store Fund. I also note that of the $14 million surplus, money made from phone calls constitutes the minority. I believe that NDOC is projecting $1.2 million to be made from phone calls this year out of a total of $14 million. Reducing the amounts by $1.2 million still leaves an abundance of money in this fund that comes from sources outside of phone calls.

SENATOR HANSEN:
We are talking about changing to tablets and other things in other bills, and this is a pilot program. Do you know if the State has a contract with the phone company where it agrees to make 50 cents a minute or something per call? Are we in effect violating a potential contract between an independent contractor and the prison system?

MR. GRINSTEIN:
That is an important consideration. This bill would not necessarily alter any contract that exists with a phone provider. We are not proposing to eliminate payments to the company for these phone calls. Instead, we are suggesting the Department cover that cost for families through the Offenders' Store Fund and then through the other sources of money that we have set out in the bill.

VICE CHAIR HARRIS:
They are still getting paid. We are talking about who is paying.

STELLA THORNTON (Nevada Youth Legislator, Senatorial District No. 16):
I am here to testify in support of S.B. 234. As research shows, the children of prisoners can suffer from behavioral issues, poor school performance and a heightened risk of crime and delinquency. This bill is designed to facilitate and encourage a continuing relationship between offenders and the children of offenders. This pilot program is important to establish parent-child relationships. The United Nations Children's Fund, known as UNICEF, states a positive early bond lays the groundwork for children to grow up to become happy,

independent adults with loving, secure relationships. This helps build resilience, their ability to cope with challenges and to recover from setbacks. Generations of incarceration are costly to the State but even more costly to the offenders who see their children repeating the parents' mistakes. The stories from incarcerated parent's, Exhibit D, that Youth Legislator Grinstein provided to the supplemental resource list are incredibly moving and stressed the need for this program.

I encourage you all to read them with an open mind and an open heart. Please join me in supporting S.B. 234 to pioneer a better tomorrow for offenders and their children.

SHERYL SAMSON (Return Strong!):
I am a resident of Fallon. In the past, I worked at the California State correctional system for many years. I have witnessed the obvious struggles that families and children deal with during the incarceration of a parent. I am in support of S.B. 234. Consider this through the eyes of a child left behind by an incarcerated parent. If you consider the rural locations of our State prisons, many of these children will never physically visit their parents in the prison. Whoever is caring for them is usually faced with financial constraints along with added day-to-day stressors and the limitations of transportation to any prison. In most cases, the child's ability to hear the parents voice again is decided by the cost of a phone call. This means the child is serving time in their own way.

If vetted appropriately and rolled out with positive guidelines and proper funding, any child would benefit from this as a true gift. Hearing a parent's voice could erase imaginary thinking that a parent no longer may exist or has completely forgotten about them. There could be less worry, less agitation and less alienation between both the child and the parent. I see this as a pioneering social component in the prison system which would deal with the isolation that these innocent children are facing as they are living with a parent behind bars. And if anyone is interested, I facilitated a book-reading program with the incarcerated adult and his or her child with books previously arranged for, and it was a popular program in California.

NICK SHEPACK (Fines and Fees Justice Center):
I was first introduced to Mr. Grinstein by leaders in this subject from around the Country who reached out to me to make sure I had connected with him—people in New York and Chicago. He has done his research, brought the bill and

the culmination was the presentation you saw today. We work with the cost of incarceration. We have other legislation that will bring to light more information on many of the questions you asked about the funding for the Offenders' Store Fund, phone call costs, all these things.

This bill calls for a pilot program to allow kids to talk to their family, which all studies show is a huge indicator of reduced recidivism and improved mental health wellness for children. The evidence collected from this pilot program and study will lead us to make better decisions in future legislation. It is important we think this through. The money is there, so we do not need to worry about it. The money saved from ensuring a reduction in recidivism and knowing kids have improved mental health and better school outcomes is going to be a huge savings to the State. This is an amazing bill. We are proud to support it, and we hope you do too.

JODI HOCKING (Executive Director, Return Strong!):
I am the founder and executive director of Return Strong! an organization that represents over 3,000 incarcerated people and over 1,000 families. My husband has been incarcerated in Nevada for years and luckily had the privilege of being able to afford phone minutes. I have seen the impact of what happens to children when they lose contact with a parent for a variety of reasons. Sometimes, it is because of money when families just cannot afford minutes, like if a grandparent is working and raising grandkids while their parent is incarcerated and phone minutes are too expensive. Those kids lose contact. The remaining parent is effectively a single parent, dealing with all the financial costs. But this is important stuff. Imagine if you could not sit at the table with your kids and do math with them or read a bedtime story or all those simple things we do with kids when raising them to build connections.

I attended the State Board of Pardons Commissioners where a man received a pardon. He had been incarcerated for 45 years and his two adult daughters, now in their 40s, testified to how influential he has been in building their character and using the choices he made that landed him in prison. Both testified at the Pardons Board that they would not be the women they are now. They are in college, raising their families, and there has been no generational cycle of crime because they were able to maintain those connections. I hope people understand that no matter who your family is or where your family is from, whether your loved one is incarcerated or homeless or addicted to drugs,

every family has strengths, and this bill allows us to build on those strengths for every family.

JOHN J. PIRO (Clark County Public Defender's Office):
I strongly urge your support of this measure. Love is part of what tethers us to this world and maintaining a connection with a family member. Director James Dzurenda from NDOC said love is what keeps people going when they are inside and keeps them going on the right track when they get out. This bill would go a long way to help fix that.

TONJA BROWN (Advocates for the Inmates and the Innocent):
I echo all the previous comments made here today and personally thank Youth Legislator Grinstein for the wonderful presentation. I will tell you that keeping the lines of communication open between a parent and a child is instrumental in keeping that bond together for both. Also, for families who are financially struggling, the calls do become few and far between. There is a distance, and children may not know it is a money situation. They might think they did something wrong. That weighs on them.

Being someone who has been a part of this going back 35 years and watching my children as toddlers grow up into adulthood, having a loved one call and having that communication is wonderful. I will tell you that every Saturday morning, 10 a.m., the phone would ring, and it would be a fight between my children about who was going to get that collect call first. This continued until they were adults. It is so important to keep this communication between the parent and the child. They do grow up with it, and it is a wonderful thing to do.

HANA FAHMI (Children's Advocacy Alliance):
I say ditto to what has been said.

PAMELA BROWNING (Return Strong!):
I want to share how this has affected me and my loved one. He has been incarcerated for eight years. He has four children, and I am the main contact between him and his children. To make sure he gets enough time with each one of them costs me up to $450 a month, just on the phone calls. With 4 children and only 15 minutes each, sometimes a single call is not enough. He has been away for eight years, and keeping this connection and bond between him and his children is important. One of his sons was having a hard time forgiving him, having abandonment issues and doing badly in school. But

because of the constant connection through these phone calls, he was able to forgive his dad, and they are now moving on to a better future. I am working more than one job to maintain everything here and there for him. I am in full support of S.B. 234, as not only will it continue to help my loved one but all those who have children without the finances for constant contact. It is important for all parties during this time.

BRIGID DUFFY (Clark County District Attorney's Office):
Mr. Grinstein reached out to me specifically to review this bill and see if there was a way I could fit into any type of support. Immediately upon reviewing the bill, I thought about our children in foster care who I deal with every day. When incarcerated parents need to rely on relatives to care for those children during that period of incarceration, this bill will open some avenues for them to maintain connection without the added expense to families and caregivers. It is also going to maintain relationship with our children who we see with some extensive behavioral needs when they feel as if their parent has abandoned them. It would be in the best interest of that child to maintain that relationship. Clark County Department of Family Services supports it.

AVON HART-JOHNSON (President, DC Project Connect):
I am pleased to provide testimony (Exhibit E) today in support of the legislation S.B. 234 to provide incarcerated parents with the ability to communicate with their child cost-free. I am the president and founder of DC Project Connect, a community-based organization that works with other like-minded organizations across the Nation, including Nevada. In my role as the advocacy in action coalition chair, our goal is to ensure the well-being of families and children affected by incarceration across the Nation. Outside of advocacy, I am a researcher and have conducted multiple studies both domestically and abroad. The results are the same that incarceration can affect families, thereby traumatizing them. Our research specifically focuses on how families are affected by incarceration.

Through my research and firsthand experiences, we have learned how important it is for communication to occur between parents and children. In fact, it might bridge the gap between a child feeling loved and supported versus feeling abandoned and isolated from the parents. As you are aware, many families face extreme financial challenges, and this bill proposes to help with that matter.

Separation has adverse consequences on children, especially when contact is not maintained. Beside the possible traumatic exposure based on separation and even stigma, a child's relationship with the parents plays an important role in offsetting potentially psychologically distressing symptoms. This bill represents a consistent form of contact, more imperative for the child than the adults. An essential part of child development as it relates to parental incarceration is to build secure attachment bonds. The critical years for those attachments are for children before they reach the age of 18.

Many children may also face adverse childhood experiences (ACEs), which can lead to toxic stress that disrupts the normal growth and development of a child. Children experiencing four or more ACEs have shown a decrease in life expectancy of 20 years. Persons who have experienced four or more categories of childhood ACEs compared to those who had none had a four to twelvefold increase of health risks, including alcoholism, drug abuse, depression and suicide attempts. However, there is good news. We can offset these adversities by taking purposeful and deliberate steps such as S.B. 234. I appreciate the opportunity to testify today. I appreciate the support and the remarkable work that has gone into this legislation, and I support this legislation.

DENISE BOLAÑOS:
I am a resident of Carson City and personally impacted by incarceration. I would like to express my support for S.B. 234. It is so important for a child's emotional and mental health to maintain a semblance of a normal relationship with his or her parents through incarceration. The cost of phone calls should not be an impediment for those relationships to thrive.

Speaking for my family, based on our monthly statement and breakdown of costs by Securus Technologies, the company calls are made through in Nevada, just one 30-minute phone call a day every day adds up to $150 to $200 a month, which is not easily supported by our family. And when multiple children and blended families are taken into consideration, those costs go up, which is our case. We limit the calls to a few minutes per person every other day. That bare minimum contact will not build and maintain relationships. Let us ease the burdens of families already facing so many challenges of incarceration by supporting this bill.

CHRIS CAVALLO:
I speak on behalf of my two grandchildren who live in Florida. My son was previously incarcerated. At the time of his incarceration, my grandson was 14 years old. My grandson's mother tells me that my grandson felt so alone. He felt like he had no connection with his father. He felt abandoned. Obviously, they were not able to visit him since he was incarcerated in Nevada. My grandson has an alcoholism problem at an early age, and this is partly because of the lack of communication with his father.

His younger sister, my granddaughter, has tried to commit suicide two times. They need to have that communication with their parents. To me, this is more about the children because I have seen how my grandchildren suffer. I am in full support of this bill.

JAMES JONES (Inspector General, Nevada Department of Corrections):
The NDOC is hopeful with the potential passage of A.B. 35 and the opportunity for increased communication and family reunification that most of the goals posed in S.B. 234 will be addressed at this time. The NDOC is neutral on S.B. 234. We look forward to working on the legislation to address some concerns regarding implementation and other inherent requirements.

WISELET ROUZARD (Americans for Prosperity Nevada):
I want to thank Max Grinstein on a well-thought-out presentation. Thank you, Mr. Grinstein, for all your hard work. We hope you keep it up.

VICE CHAIR HARRIS:
We will consider that testimony to be in support of S.B. 234.

MR. GRINSTEIN:
I emphasize this is a straightforward piece of legislation to benefit families. We look forward to working with Committee members and NDOC to address any areas where the bill could be improved.

SENATOR SCHEIBLE:
I have received two letters of support (Exhibit F) for S.B. 234.

VICE CHAIR HARRIS:
The hearing on S.B. 234 is now closed. The hearing on S.B. 235 is open.

SENATE BILL 235: Revises provisions relating to pretrial release. (BDR 14-310)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):
Senate Bill 235 is about pretrial release, something we talk about a lot in the Senate Committee on Judiciary and in the Assembly, for those of you who served on the Assembly Judiciary Committee. The Nevada Supreme Court made a decision in 2020. When we came to the 2021 Session, we codified the decision that requires that every person who is arrested to receive a pretrial release hearing in a reasonable time, imposing the least restrictive means necessary to ensure his or her return to court and the safety of the community. As is always the case when a substantial change like that is made in the criminal justice system, there were some finer points to be worked out. This bill addresses a couple of the issues we have seen since implementation of the legislation from the 2021 Session.

Three different amendments have been posted online. Senator Harris prepared a friendly amendment (Exhibit G). I will speak to that amendment while addressing the structure of S.B. 235 because it is not a complicated bill. The bill does two things, and the amendment does one more.

First, S.B. 235, subsection 2 clarifies that if a pretrial release hearing is to be continued, it can be continued either at the request of the prosecutor, the defense or the court for good cause. Second, the bill clarifies that the parties can also stipulate to continue a pretrial release hearing. For example, I have seen this utilized especially in serious cases like murder cases when both the prosecution and the defense know the person is not going to be released on his or her own recognizance within 48 hours. However, they do want some time for the defense to get to know the client for the prosecution to get to know the case, and to figure out that for which they are going to argue; if for cash bail, how much cash bail is being requested so the defense attorney can figure out if the client can make any monetary bail and whether the client will be eligible for house arrest—those kinds of things. In those cases, when both the prosecutor and the defense attorney come to the judge and say they would like to continue this hearing for a week, the judge is allowed to accept that stipulation and move the hearing to the date agreed upon by the parties.

To clarify, stipulation can be oral, written, email or telephone. It does not have to be any prescribed form notarized or anything like that. It can be simple, especially when thinking about our rural jurisdictions that might not have a

calendar of 75 pretrial hearings. They might have two people in custody on a particular day. If the prosecutor and defense attorney agreed to continue both hearings until the regularly scheduled calendar on Wednesday, then that phone call would suffice.

The conceptual amendment prepared by Senator Harris fixes something else we overlooked in 2021. This relates to what happens when somebody who has already been released violates one of the conditions of release and ends up back in custody. For example at that 48-hour hearing, the judge might release the defendant but tell him that he cannot have any alcohol and must come back to court in 2 months. The defendant is stopped by law enforcement, not driving but for disorderly conduct. He is clearly intoxicated and arrested. The judge is notified that the person is back in custody. The defendant and his attorney come before the judge again, and the person has violated one of the conditions of release. The NRS says the judge can increase bail or revoke bail. It does not say the judge can also impose additional conditions. In this example, the most logical thing to do and what most judges I have encountered would want to do is put that person on an alcohol monitor. We want to give the judges the ability to impose additional conditions. This does not mean the judge cannot increase bail or revoke bail if appropriate; it gives the judge flexibility to also impose additional conditions as a response to violating the previous conditions.

You also received a joint amendment (Exhibit H) from the Nevada District Attorneys Association (NDAA), Nevada Association of Counties (NACO), Nevada League of Cities and Municipalities and the Nevada Urban Consortium. This amendment makes a significant change to law by extending the timing of a pretrial release hearing from 48 hours to 72 hours. This is not a friendly amendment. The reason you have the amendment in front of you is that I am sure the four organizations that came together to develop this amendment have been talking to you just like they have been talking to me. I thought it was only fair that we all be on the same page about the request. It is not an empty request without an amendment. They went through the process, they brought me the amendment. I rejected the amendment, but I want you to see it anyway.

The same is true of the NDAA amendment (Exhibit I) which does not do quite the same thing. That one specifies good cause in the case of being unable to contact a victim in a timely fashion. It is only fair that you see the amendment, even though I do not consider it to be a friendly amendment.

SENATOR STONE:
If the parties stipulate, can they do this more than once? Next, I am concerned about the definition of "next regularly scheduled calendar." As you know, courts can be pretty jammed up. They have their schedules in advance, so I do not know if you intended this to be the first court date after they agreed to the stipulation, or is it preferable to say next available regularly scheduled date?

SENATOR SCHEIBLE:
I do not see any reason that the parties could not stipulate to the continuance because it is a stipulation. If at some time, one party wants to continue and the other one does not, then they must appear before a judge. Regarding your second question, the continuation to the next regularly scheduled calendar is separate from the stipulation because the stipulation could be in three weeks. The purpose of requiring the court to continue the matter to the next regularly scheduled calendar is because a lot of our rural courts meet on a protracted schedule. We are talking every 14 days. The intent of the bill is if the court has a busy calendar and continues somebody's hearing during that 14-day window, the court has to add it to that next regularly scheduled calendar.

In Henderson Justice Court, which is a more urban area, each department does not have a calendar every day. The court does have a bail calendar every day. If the case is already assigned to a particular department and the case is continuing, the purpose of this bill is to say the case will be heard on a Thursday. Given the judge finds good cause to continue the case whose next calendar would be the next Wednesday, then the case would have to be calendared for that Wednesday. You cannot move it to the following Monday. For the courts that meet every day, like the Las Vegas Justice Court, it would be moved to the next day unless there is a stipulation to move it beyond one day.

SENATOR STONE:
Can judges reject a change to their calendars? If they get an agreement from the other two attorneys, the judge cannot unilaterally say no, there is no room on the calendar today. It must be Tuesday.

SENATOR SCHEIBLE:
Correct. That is the intent.

VICE CHAIR HARRIS:
Would you consider the date being a holiday or a weekend as good cause to continue one of these cases?

SENATOR SCHEIBLE:
That is not the purpose of this legislation, to allow for a continuation to avoid weekends and holidays. I would not consider that good cause, and we are not trying to include them as a good cause here.

SENATOR NGUYEN:
I appreciate you including the amendments even if they were not friendly. I have a question about the section in the NDAA amendment that attempts to include good cause when there is insufficient time to contact the victim of crime pursuant to Marsy's Law. Is that already included in the ability to ask for that continuance?

SENATOR SCHEIBLE:
Yes, that is included. It is the purpose of having a judge be able to rule on good cause because every case is different. Depending on the timing of the arrest, the timing of the pretrial release hearing and the relationship with the victim, it could be good cause for the district attorney to move for continuance based on not having had the ability to discuss the case with the victim.

SENATOR NGUYEN:
I know this is a policy committee, but during the Interim there were lots of conversations about the inability to staff some of these rural county courts on the weekend. Several of us sit on the Senate Finance Committee so we have heard that this is a real problem. Would that potentially be contemplated as a good cause? If there is not enough staff to do this, a judge could decide?

SENATOR SCHEIBLE:
I suppose they could. I am not the arbiter of good cause; that is a judge's job, but that would be a valid consideration. This is not the question you asked, but the staffing issues and the cost associated with holding these trials is a real concern I am hoping will be addressed during this Legislative Session. This bill does not solve that problem, but we should be looking at some other ways to alleviate those financial and capacity pressures.

MARY WALKER (Douglas County; Lyon County; Storey County):
We rise in support of S.B. 235 regarding pretrial release hearings. We thank the Committee for looking for solutions to help rectify the significant problems which arose when the 2021 Legislature required a pretrial release hearing within 48 hours after arrest. Our greatest concern in rural Nevada is the impact on our judges and staff.

To give you an example of how things work in rural Nevada, we have a judge in a smaller jurisdiction who now works all week and every weekend. She does not take vacations. She trained herself on her staff's computer system to record her decision on pretrial release. She is not only doing the work of a judge but the work of staff, so her staff does not have to work weekends and holidays. This is the type of people we have working in the rural justice system. They have dedicated their lives to serving justice in their communities. However, this is not sustainable. We have excellent judges in the rurales borne out by the fact there are few complaints on our rural courts.

My greatest fear is unless we have a sustainable system that these judges and their staffs can operate under, we will lose them. As you are aware, we have a difficult time attracting professionals, whether it is a doctor, nurse, teacher or lawyer. We need a judicial system that does not exacerbate this problem. If we lose our judges and staff, which we are already starting to see, there will be a degradation of Nevada's rural court system. Who will be attracted to 7 days a week, 365 days per year job with limited pay?

Please help us retain our Nevada judges. We are already seeing a degradation in the rural courts due to the staffing problems. I would be willing to work with all parties to come to a solution to make the Nevada judicial system sustainable for judges and staff.

MR. PIRO:
This Body passed A.B. No. 424 of the 81st Session and S.B. No. 369 of the 81st Session with broad-based bipartisan support. It was not just one party pushing elements of legislation through. It is because this Body recognized that prompt means prompt and when you are arrested, the presumption of innocence stands and you should have a prompt pretrial determination on whether you should be released. Looking at the NDAA's unfriendly amendment, Exhibit I, sometimes Marsy's Law can be used as a sword and a shield. The law says the victim should be notified. Then who should do the notifying? The district

attorney? The police say the victims should be notified, but we should not have the duty to notify them. The court says the same thing. We keep passing the buck.

The easiest way to make sure victims are notified is that somebody arrested will have a hearing within 48 hours, and the victims will be available. There is a set hearing time when victims will be there and be heard on their concerns without anybody shifting responsibility on who should notify the victims so they can exert their constitutional right.

This is a good commonsense piece of legislation to fix some of the issues we have run into. The system does need a little bit more time to see what it really looks like before we start tinkering since we just changed it two years ago. Please do not consider the unfriendly amendments; move forward on the legislation with the conceptual amendment that Senator Harris put forward.

JENNIFER NOBLE (Nevada District Attorneys Association):
The NDAA represents the 17 elected district attorneys throughout Nevada. Pursuant to Committee rules, we are testifying in opposition to S.B. 235 as written because it does not address, in our view, the ongoing logistical, financial and practical conundrums that continue to be faced by our rural jurisdictions. I thank Chair Scheible for sharing our proposed amendments and for taking the time to talk to us about some of the ongoing challenges we continue to face, especially in our rural jurisdictions, when it comes to pretrial hearings. We hope to continue those conversations.

Two amendments have not been accepted by the Chair. One amendment is from the Nevada League of Cities and Municipalities, Nevada Urban Consortium, NACO and NDAA, Exhibit H, and the other is exclusively an NDAA amendment, Exhibit I. To be clear, we do not dispute that people who are arrested should have their pretrial hearing promptly. This is not a philosophical or moral debate about that. We agree with it. The problem is we had legislation last Session that made changes requiring 48 hours in all our counties and jurisdictions without providing the resources or the tools necessary to make the change workable for all of Nevada, not just Washoe County or Clark County. We have some district attorneys' offices with one attorney. We have some with two. We have one with 160 attorneys. Last Session, prosecutors and judges from the rural jurisdictions made clear that in some of our areas in Nevada, the existing resources and personnel make compliance with the 48 hours burdensome and

impracticable. That does not mean it should not happen. It means they are having a lot of trouble making it happen, and that should be important to the people who represent them.

We reminded this Committee last Session that legislation must keep in mind all Nevada, and I know that you tried to do that. During the Joint Interim Standing Committee on Judiciary, Nevada Judges of Limited Jurisdiction explained the hardships that they continue to face, like staff shortages and technology issues. This includes the problem with defense attorneys who are on a contract basis not being willing to work seven days a week. These problems are all still happening in our rural jurisdictions. We need more time, but if more time is not a possibility, then we need more resources and more tools. I hope to work with you to figure out how that can happen. We are willing to work with Chair Scheible, this Committee and all the stakeholders to make sure arrested persons receive a prompt hearing no matter where they are in Nevada.

One amendment from the NDAA, Nevada League of Cities and Municipalities, NACO and the Nevada Urban Consortium, Exhibit H, seeks to modify statute to exclude weekends and legal holidays from the 48-hour period. I understand that is not something Chair Scheible wants to do. I anticipate members of this Committee will be opposed to that. But it is not because of a lack of understanding that people deserve a prompt hearing. It is because we do not have the funding or the resources in all our jurisdictions.

Additionally, NDAA has submitted its own amendment, Exhibit I, that modifies the law in two ways. First, it provides that either party secures a continuance when the other party secures a continuance. At the pretrial release hearing, the court is not obligated to place the hearing back on the next scheduled calendar. I will give you an example: If a defense attorney in a murder case says he wants to continue the hearing to an arraignment, the court should be able to continue the arraignment. In Clark County, that is typically two days away. So the mandatory deadline on the next calendar date puts the hearing before the scheduled arraignment and often before a criminal complaint is filed. At times, the defense attorney might request that, but the District Attorney does not feel comfortable stipulating to it. We get into a situation where if the District Attorney does not stipulate, there is an efficiency issue.

The amendment provides judges with the discretion under appropriate circumstances to forgo setting an additional hearing, which will be continued

again based on good cause shown by the defense or the prosecution. The NDAA amendment also provides that a court shall find good cause to continue a pretrial release hearing when there has not been enough time for the victim to be heard consistent with his or her constitutional rights. Whether you agree with Marsy's Law or not, it is part of the Constitution of the State. I do take some issue with the suggestion the district attorneys are shifting responsibility when it has to do with informing victims of their rights and making sure they know when that hearing is. It is not just our responsibility, but in my office, the Washoe County District Attorney's Office, we undertake that responsibility seriously and make every effort to make sure the victim knows when that hearing is.

However, consider a sexual assault victim who in 48 hours may have just finished their sexual assault exam. After finishing that exam, he or she might need a little extra time to go home, take a shower now that the evidence has been collected, administer self-care and get an hour of sleep before facing the assailant at a pretrial release hearing. That certainly does not apply in every case, but we should be able to request a reasonable period so that the victim can be heard consistently with his or her constitutional rights. I do have specific examples of how this is not working in our rural jurisdictions.

VICE CHAIR HARRIS:
This Committee looks forward to getting the list of resources you need to make the 48 hours happen, and I commit to you that we are all partners in that. Tell us what you need; we are happy to consider the needs and do our best efforts to get them fulfilled.

STEPHEN WOOD (Nevada League of Cities and Municipalities):
I am testifying in opposition, although I have no opposition to the bill as written. I would love to see the amendment to which we added our name incorporated into the bill. Therefore, I am testifying in opposition. I would like to continue the conversations with Chair Scheible and the Committee as well as the other stakeholders on how we can make this work.

VICE CHAIR HARRIS:
There is no Senate rule that if you support the bill, you must be in opposition because you would like to see more. Feel free to characterize your support as you would like. I want to make that clear so that folks do not feel the need to

continue to come up in opposition just because they might have an amendment, especially when they support the bill as drafted.

KEITH LEE (Nevada Judges of Limited Jurisdiction):
As you all know, the Judges of Limited Jurisdiction are the justices of the peace and municipal court judges in Nevada. We are here in opposition to S.B. 235 as written. The judges view it as a violation of the separation of powers doctrine: Article 6 of the Nevada Constitution creates the Judicial Department, including justice and municipal courts as a separate but equal branch of government with the Executive and Legislative Departments.

Article 6, Section 8 of the State Constitution gives the Legislature certain powers over justice courts, specifically the Legislature shall determine the number of justices of the peace in each city and township of the State and shall fix by law their qualifications, their terms of office and the limits of their civil and criminal jurisdiction, the nature of the case and the penalty. The Legislature shall also prescribe by law the manner, and determine the cases, in which appeals may be taken from justices and other courts.

The Nevada Constitution does not grant the Legislature the ability to tell justice courts how to conduct the proceedings including, without limitation, when a matter—and under what circumstances—should be continued to what date it must be continued. The attempt to do so in S.B. 235 infringes upon the inherent authority of a justice court as granted by the Nevada Constitution. Recognizing that the constitutional issues I have discussed will be settled on a different playing field and we here in this building are dealing with problems and solutions, the judges adopt in principle the outlining of the problem and possible solutions as set forth in the Nevada District Attorneys Association letter (Exhibit J) that is part of the record. We also support the amendment, Exhibit I, presented by the Nevada District Attorneys Association and discussed here. Particularly, we respect the fact that Marsy's Law should be considered. It is enshrined in our Constitution, so it should be considered. We also support the amendment, Exhibit H, provided by the municipalities.

Senator Harris and I have had conversations dating back to last Session on these matters as we all recognize we need to work toward some solutions. I appreciate Senator Scheible allowing the discussion on the two amendments that she considers unfriendly; I understand why she considers them unfriendly amendments. We pledge, as do the other stakeholders, to continue to

collaborate with members of the Legislature and all the other stakeholders in trying to resolve the problems we are discussing,

With respect to the Nevada Judges of Limited Jurisdiction, the judges and their staffs are not the only limitations. In fact, they are not the only limitations to 48-hour hearings. We understand from the judges' perspective that one of the biggest problems is having prosecutors able to meet with the defense counsel, defense counsel meets with his or her client and the prosecuting attorney to understand what the charges are all about. We are willing to work with everybody to try to solve these problems.

VICE CHAIR HARRIS:
Just so the record is clear, the bill sponsor suggested that Marsy's Law is a reason a judge upon his or her own wisdom may continue a case. I do not want there to be any confusion that this bill as presented and intended by the sponsor would not allow continuation to comply with Marsy's Law.

MARC SCHIFALACQUA (Henderson City Attorney's Office):
I thank Chair Scheible for her consideration of the two amendments and her openness to continue discussions. The bail in pretrial custody determinations must reflect a balance in the criminal justice system, namely a balance between a defendant having a prompt hearing after arrest; the consideration of those the crime affected, namely the victim; and a chance to be heard, which is the constitutional right of that victim. Statute does not always reflect a proper balance.

The 48-hour rule found in A.B. No. 424 of the 81st Session is not mandated by either the State or the federal constitution unless it can be changed to accommodate everyone in the system. We are asking for that change to be considered. The joint amendment would accommodate the rights of victims to help ensure reasoned and informed bail decisions. Many times, defendants are arrested for just a few hours—not a full 48 hours, just a few hours prior to the hearing. It is difficult to get a victim to court or on the phone or have their voice heard through an advocate. While I agree that either party could ask for a continuance based on good cause, there is no settled understanding of that phrase. It is not defined in the law, and it is not universally found in the law or interpreted by the courts.

By building more time in the calculation of the system or excluding one or more days from the week, we will have a greater likelihood of victims being able to have their voices heard that would provide some much-needed balance. The extra time will also encourage defendants to have greater participation in the system. Defendants are often under the influence or upset about the arrest and do not come to the hearings. In about a third of our hearings, the defendants do not appear and so the hearing must be continued or the case argued without the defendant due to the time frame. Additionally, staffing issues are real, and I do appreciate the comments of everyone today noting that.

CARLY HELBERT (Las Vegas City Attorney's Office):
I am testifying in opposition but support the amendment sponsored by the NDAA. We agree with the previous testimony regarding Marsy's Law and note that prior to the enactment of A.B. No. 424 of the 81st Session, the Las Vegas City Attorney's Office was able to arraign all defendants at their first court appearance when they were in custody. We now have duplicative court appearances within 48 hours of each other because we are unable to staff weekend hearings for people who have a pretrial detention hearing on Saturday and holidays without the ability or time to file complaints. The complaints are drafted on Monday when we are fully staffed, and the defendants are then arraigned 48 hours after their Saturday pretrial detention hearings. This is an inefficient use of resources for defendant's attorneys, courts and staff.

Our office in the Las Vegas Municipal Court has committed to following the Nevada pretrial risk assessment tool for several years prior to the effective date of A.B. No. 424 of the 81st Session. As a result, any low-risk defendant was released on his or her own recognizance, always without conditions. Only defendants with high-risk scores and who represent a public safety risk were detained an extra day or two over the weekend, prior to the arraignment on Monday. Our office is also committed to notify the court about any charges denied over the weekend so defendants were not unnecessarily detained that weekend.

While we recognize the constitutional rights as import of the defendant's presumption of innocence, it is worth reminding the Committee that except for battery, domestic violence and DUI, which have a mandatory cooling-off period, a defendant typically cannot be arrested on a misdemeanor crime unless the crime is committed in the officer's presence or because the defendant was cited and failed to appear in court resulting in a bench warrant.

With the Las Vegas Municipal Court and the Las Vegas City Attorney's Office properly utilizing the Nevada pretrial risk assessment tool mandated by the Nevada Supreme Court, the Legislature's enactment of A.B. No. 424 of the 81st Session did little more than create a significant financial burden to staff weekend hearings for high-risk individuals who committed a crime in front of an officer or who failed to appear in court release. There is simply a much better use of these resources. We look forward to working with you on an amendment.

SENATOR SCHEIBLE:
We have all been working hard to find a workable solution for the codification of the *Valdez Jimenez* decision. Part of that ensures people get a pretrial release hearing in a reasonable amount of time. The Supreme Court called on the Legislature to determine what a reasonable time is. Our response was 48 hours. When we did that, we also built in some safety valves. One of them was the good cause continuation. Another one allowed justices of the peace to sit in different jurisdictions and develop a rotating schedule for their pretrial release hearings. A third one enables of all of these to be done electronically via video or through some other technological means.

In the Interim, when we learned a lot of the rural jurisdictions were struggling to make these hearings happen in 48 hours, we brought them back into the Joint Interim Standing Committee on Judiciary. This bill comes from a hearing at that Committee where we discussed possible solutions to the challenges of having the hearings within 48 hours. We asked the justices of the peace, the rural jurisdictions, NACO and NDAA why those guidelines with the safety valves in the legislation were not working. Then we asked what other things we could do to make this work better.

We discussed defining good cause. Ultimately, reviewing the record of that Committee hearing as well as continued conversation with the stakeholders made clear that defining good cause has not been identified as a good option because we cannot agree on it. Nobody wants to take that discretion away from judges. Good cause is utilized throughout the *Nevada Revised Statutes*. It is left to judges to understand and define.

Personally, when the Interim Judiciary Committee had this conversation about good cause, I thought something we could do is utilize a definition from a previous Supreme Court case. I reread all the cases about good cause

continuances for preliminary hearing and found that the Court has never actually defined good cause. It has determined circumstances that are good cause and not good cause, but nowhere is a succinct phrase which defines good cause. I suggest it was a good idea to define good cause but not a workable solution.

We asked what other problems the jurisdictions are having with not being able to continue their hearings. We learned that some of them were confused. They wanted more clarity from a judge who could define good cause. It does not have to be the good cause of the plaintiff or the defendant. It could be the judge's good cause. The other thing they asked for is clarification on whether the parties could stipulate to move the hearing. That is what S.B. 235 specifies. The judge can be the person to develop good cause, and the parties can stipulate.

I want to go back to the other safety valves we implemented and talk to jurisdictions being able to do the hearing via video, develop a rotating schedule and, if there is a policy proposal, make those options more viable. If we know what the problems are, anybody on this Committee would be willing to roll sleeves up and solve them. That is important to realize when considering policy options on the table. Senate Bill 235 is a helpful piece of the puzzle to make 48-hour hearings doable.

VICE CHAIR HARRIS:
We will close the hearing on S.B. 235.

Remainder of page intentionally left blank; signature page to follow.

CHAIR SCHEIBLE:
This meeting is adjourned at 2:46 p.m.

RESPECTFULLY SUBMITTED:

_____
Blain Jensen,
Committee Secretary

APPROVED BY:

_____
Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Introduced on Minute Report Page No.**	**Witness / Entity**	**Description**
	A	1		Agenda
	B	1		Attendance Roster
S.B. 234	C	2	Max Grinstein	Conceptual Amendment
S.B. 234	D	4	Max Grinstein	Supplemental Resource List
S.B. 234	E	13	Avon Hart-Johnson	Support Testimony
S.B. 234	F	15	Senator Melanie Scheible	Two Letters of Support
S.B. 234	G	16	Senator Melanie Scheible	Proposed Amendment by Senator Dallas Harris
S.B. 235	H	17	Senator Melanie Scheible	Proposed Amendment by Local Jurisdictions
S.B. 235	I	17	Senator Melanie Scheible	Proposed Amendment by Nevada District Attorneys Association
S.B. 235	J	24	Nevada District Attorneys' Association	Letter