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March 20, 2025

To: Assembly Committee on Judiciary

From: Washoe County Public Defender's Office and Clark County Public Defender's Office

RE: Opposition to AB172 – Assembly Committee Hearing from March 20, 2025 at 8:00 AM

I. We need to protect people's Fourth Amendment rights, not erode them.

AB172 is not about updating Nevada law to match the digital age. AB172 is about expanding the power of the State¹ to gain access to private, sensitive, personal information through social media platforms and any sort of storage devices, such as cloud storage devices and VPNs, **without a warrant**. The Nevada legislature must oppose any expansion of warrantless searches for its citizens to protect people's reasonable expectation of privacy.

The fourth amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no **Warrants** shall issue, but upon **probable cause**, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Warrants require probable cause and have judicial oversight protections. Administrative subpoenas are an infringement upon people's privacy that can be employed based on mere suspicion. Social Media platforms are not currently responding to these administrative subpoenas, and they should not have to. Social media is used rampantly,

¹ Per NRS 193.340, administrative subpoena power is given to the Attorney General, a district attorney, the sheriff of any county in this State, the head of any organized police department of any municipality in this State, the head of any department of this State engaged in the enforcement of any criminal law of this State and any sheriff or chief of police of a municipality. NRS 193.340. This is also an extremely broad designation for administrative subpoenas when compared to other States.



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and citizen's private communications need to be protected. If the State is interested in your private communications, they need to **get a warrant**.

II. Nevada administrative subpoena power is overreaching and provides little safeguards when compared to other states

Since we are talking about administrative subpoenas, something does need to be done about them, and expanding their reach is last on the list.

Nevada

Nevada administrative subpoena power is broad and overreaching. Nevada allows administrative subpoenas for any criminal investigation "that involves or may involve the use of a computer." NRS 193.340. Reading that should make one believe that means that the State would only have this power if the crime alleged was committed through the use of a computer or the internet. However, we know this is not true. In the example the State gave during the presentation for AB172 they described trying to gain access to an Instagram message that was seen on a child victim's phone for a murder case. So we know, the State views their power much more broadly, and into any devices that are in connection with any crime.

the presentation of AB172 they mentioned similar laws in Washington, Virginia, and Tennessee. When researching those other state laws, we found that the administrative subpoena power given to law enforcement were *extremely limited* and had *important safeguards* in place.

Washington

Washington limits the administrative subpoena power only to offenses involving the sexual exploitation of children and the ability is only given to prosecuting attorneys. It also establishes a process called "the special inquiry judge" in order to request a subpoena.



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RCWA 10.112.010. This process requires a petition to a judge, and the proceeding has to happen as soon as practicable but no later than seventy-two hours after the filing of the petition. RCW 10.27.170.

The Washington legislature noted “that in investigations of child exploitation, the use of a special inquiry judge is the appropriate process for obtaining subpoenas for the production of records from electronic communications providers under a less than probable cause standard while maintaining judicial oversight.” [2017 c 114 § 1.] The Washington Legislature recognized administrative subpoenas are obtained under a standard less than that required by the Fourth Amendment; therefore, they placed constitutional safeguards by requiring a “Special Inquiry Judge” to review requests for Administrative Warrants.

Virginia

Virginia also limits the administrative subpoena power only to cases involving abduction and kidnapping, prostitution, anti-human trafficking laws, and child pornography. VA Code Ann. Sec. 19.2-70.3. This power is limited to only prosecuting attorneys and the Attorney General. VA Code Ann. Sec. 19.2-10.2. In order to obtain records with an administrative subpoena, there must be a certification on the subpoena that the records or information sought are relevant to a legitimate law enforcement investigation concerning one of the violations mentioned above. It allows the service providers to file a motion to quash the subpoena if the information requested would result in an undue burden on them. It limits the amount of time to 30 days that the information can be used. It allows for a motion by the defense to discover the existence of the use of these subpoenas. *Id.*

Tennessee

Tennessee also limits administrative subpoena power to offenses of sexual exploitation of a minor and aggravated sexual exploitation of a minor. T.C.A. Sec. 40-17-125. This power is limited to the district attorney general or an assistant attorney general. It also requires



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the requesting prosecutor to show reasonable cause to believe that “an internet service account has been used in the exploitation or attempted exploitation of a minor.” *Id.* It explicitly lists the type of information a subpoena can compel like name, address, local and long distance telephone connection records, or records of session times and durations, length of service and type of service utilized, telephone or instrument number or other subscriber number of identity, and means and source of payment for such service, including any credit card or bank account number. Importantly it also lists what information shall not be disclosed, like in-transit electronic communications, account memberships related to internet groups, newsgroups, mailing lists or specific areas of interest, account passwords, electronic mail, address books, contact lists or buddy lists, financial records, internet proxy content or internet history, and files or other digital documents stored within the account. Additionally, it allows a petition for an order modifying or quashing the subpoena. Importantly Tennessee requires an annual report to the judiciary committee of the legislature that includes the number of requests for administrative subpoenas, the number of subpoenas issued, the number that were contested, the number that were quashed or modified, the number of search warrants that were issued as a consequence of the issuance of an administrative subpoena, and the number of individuals that were prosecuted. *Id.*

The Tennessee law was passed through HB1257 during the 106th Tennessee legislative session. At the hearing on April 22, 2009, during discussion of the bill, legislators expressed concern over the constitutional issue of warrantless searches. And with this in mind, they arrived at the limited language the law has now.

What is important to highlight from all of these other states is that administrative subpoena power is *extremely limited* and needs *important safeguards*.



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III. Nevada law needs to be changed—to strengthen fourth amendment protections, not weaken them.

Researching how other states have carefully given administrative subpoena power grossly brings to light how unchecked Nevada law is. Instead of giving the State more unrestrained power into our private information, the legislature should put in place safeguards to protect citizens fourth amendment rights.

First, Nevada should limit the administrative subpoena power to only the most serious cases involving the most vulnerable population—children. This power should only be for cases involving charges like sexual exploitation of a minor through the use of the internet or child pornography. Secondly, this power needs to be limited to prosecuting attorneys and the Attorney General's office. Third, we could still require some judicial oversight with a lower standard for the subpoenas. Fourth, like in Tennessee, the law needs to list what information shall not be disclosed. Fifth, Nevada law needs to allow a motion by the defense to discover the existence of the use of these subpoenas. Lastly, we need to require that the State submit an annual report on the use of administrative subpoenas.

Or the State can just **get a warrant.**