

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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Tracie K. Lindeman  
Clerk of Supreme Court

THE STATE OF NEVADA,

Appellant,

vs.

ANDRE D. BOSTON,

Respondent.

CASE NO: 62931

**PETITION FOR REHEARING OR ALTERNATIVELY MOTION TO  
CORRECT MISSTATEMENT OF FACT**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and submits this Petition for Rehearing or Alternatively Motion to Correct Misstatement of Fact pursuant to Rules 27 and 40 of the Nevada Rules of Appellate Procedure (NRAP). This pleading is based on the following memorandum of points and authorities and all papers and pleadings on file herein.

Dated this 6<sup>th</sup> day of January, 2016.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar # 001565

BY */s/ Jonathan E. VanBoskerck*

JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
Attorney for Appellant

**MEMORANDUM**  
**POINTS AND AUTHORITIES**

The State seeks correction of an erroneous statement of fact in this Court's published opinion that incorrectly claims that "[t]he State argues that *aggregate* sentences that constitute the functional equivalent of life without the possibility of parole are not included with the amendments set forth in A.B. 267." State v. Boston, 131 Nev. Adv. Op. 98, p. 13 (2015). The State argued the exact opposite. Correction of this error will not impact the holding of this Court but will prevent the erroneous perception that the Clark County District Attorney's Office would testify in support of A.B. 267 and then attempt to subvert its application in this Court.

Pursuant to Rule 40(c)(2) of the Nevada Rules of Appellate Procedure (NRAP), this Court considers rehearing when it has overlooked or misapprehended a material fact or question of law. Bahena v. Goodyear Tire & Rubber Co., 126 Nev. \_\_\_, \_\_\_, 245 P.3d 1182, 1184 (Nev. 2010). Accord, McConnell v. State, 121 Nev. 25, 26, 107 P.3d 1287, 1288 (2005). Additionally, rehearing is warranted where the Court has overlooked, misapplied, or failed to consider directly controlling legal authority. Bahena, 126 Nev. at \_\_\_, 245 P.3d at 1184.

This Court's published opinion indicates that "[t]he State argues that *aggregate* sentences that constitute the functional equivalent of life without the possibility of parole are not included with the amendments set forth in A.B. 267."

State v. Boston, 131 Nev. Adv. Op. 98, p. 13 (2015) (emphasis in original).

However, the State argued the exact opposite:

This Court is correct in concluding that “it appears that the issue in this appeal regarding the interpretation and application of *Graham* to aggregate sentences will be moot when A.B. 267 takes effect on October 1, 2015.” (Order Directing Supplemental Briefing and Inviting Amicus Briefing, filed June 19, 2015, p. 2). However, reversal of the ruling below is still required since any alleged Eighth Amendment violation has been cured by A.B. 267 and as such the lower court’s holding is wrong as a matter of law. Due to the changes made by A.B. 267 it can no longer be said that Respondent’s sentences “do not provide a meaningful opportunity to obtain release” and thus there is no legitimate basis to order resentencing. (4 AA 933). The lower court’s order must be reversed due to the change in circumstances brought on by A.B. 267.

Appellant’s Supplemental Brief, filed June 24, 2015, p. 7. Indeed, the State’s response to A.B. 267 is the position adopted by this Court’s published opinion.

The State seeks correction of this misapprehension of fact in order to avoid the erroneous perception that the State would support the passage of A.B. 267 but then attempt to frustrate the proper application of the legislation. The Clark County District Attorney’s Office testified in support of A.B. 267 before the Nevada Legislature. (Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-Eighth Session, March 27, 2015, p. 22, attached as Exhibit A; Minutes of the Senate Committee on Judiciary, Seventy-Eighth Session, May 11, 2015, p. 22, attached as Exhibit B). Respondent wishes to avoid the misperception

that it would support the passage of legislation and then attempt to subvert its proper application before this Court.

Respondent requests that this Court delete the following text from the published opinion: “The State argues that *aggregate* sentences that constitute the functional equivalent of life without the possibility of parole are not included with the amendments set forth in A.B. 267. We disagree.” State v. Boston, 131 Nev. Adv. Op. 98, p. 13 (2015).

### **CONCLUSION**

For the foregoing reasons, the State respectfully requests that this Court’s published opinion be modified to delete an incorrect statement of fact as to the position Respondent took on the application of A.B. 267 before this Court.

Dated this 6<sup>th</sup> day of January, 2016.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY /s/ Jonathan E. VanBoskerck  
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## **CERTIFICATE OF COMPLIANCE**

1. **I hereby certify** that this petition for rehearing/reconsideration or answer complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this petition complies with the page or type-volume limitations of NRAP 40, 40(b)(3)-(4), and NRAP 32(a)(4)-(6), because it is either proportionately spaced, has a typeface of 14 points or more and contains 627 words and 56 lines of text.

Dated this 6<sup>th</sup> day of January, 2016.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar # 001565

BY */s/ Jonathan E. VanBoskerck*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on January 6, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT  
Nevada Attorney General

MARTIN W. HART, ESQ.  
Counsel for Appellant

JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JUDGE ELISSA F. CADISH  
Eighth Judicial District Court, Dept. 6  
Regional Justice Center, 15<sup>th</sup> Floor  
200 Lewis Avenue  
Las Vegas, Nevada 89101

*/s/ j. garcia*

\_\_\_\_\_  
Employee, Clark County  
District Attorney's Office

JEV//jg

EXHIBIT A

EXHIBIT A

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

**Seventy-Eighth Session  
March 27, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Friday, March 27, 2015, 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/78th2015](http://www.leg.state.nv.us/App/NELIS/REL/78th2015). In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Ira Hansen, Chairman  
Assemblyman Erven T. Nelson, Vice Chairman  
Assemblyman Elliot T. Anderson  
Assemblyman Nelson Araujo  
Assemblywoman Olivia Diaz  
Assemblywoman Michele Fiore  
Assemblyman David M. Gardner  
Assemblyman Brent A. Jones  
Assemblyman P.K. O'Neill  
Assemblywoman Victoria Seaman  
Assemblyman Tyrone Thompson  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

Assemblyman James Ohrenschall (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman John Hambrick, Assembly District No. 2





**STAFF MEMBERS PRESENT:**

Diane Thornton, Committee Policy Analyst  
Nancy Davis, Committee Secretary  
Jamie Tierney, Committee Assistant

**OTHERS PRESENT:**

James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth  
Xavier McElrath-Bey, Youth Justice Advocate, Campaign for the Fair Sentencing of Youth  
Mario Taylor, Member, Campaign for the Fair Sentencing of Youth  
Sara Kruzan, Member, Campaign for the Fair Sentencing of Youth  
Marcus Dixon, Member, Campaign for the Fair Sentencing of Youth  
Traci Rutherford, Member, Campaign for the Fair Sentencing of Youth  
Bridget Walsh, Private Citizen, Reno, Nevada  
Kristina Wildeveld, Attorney, Nevada Association of Criminal Justice  
Connie Bisbee, Chairman, State Board of Parole Commissioners  
Rita Sloan, Coordinator, Alternatives to Violence Project, Reno, Nevada  
Tim O'Callaghan, representing the Roman Catholic Diocese of Las Vegas, and representing the Religious Alliance in Nevada  
Mike Dyer, Director, Nevada Catholic Conference  
Marvin Neal, President, Sierra Nevada Teen Ranch  
John T. Jones, Jr., representing the Nevada District Attorneys Association  
Megan Hoffman, Private Citizen, Las Vegas, Nevada  
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General  
Paul Enos, Chief Executive Officer, Nevada Trucking Association  
Terry Care, Uniform Law Commissioner, Uniform Law Commission  
Esther Rodriguez Brown, Founder, The Embracing Project  
Chuck Callaway, Police Director, Las Vegas Metropolitan Police Department  
Marissa Crook, President, Students to Abolish Sex Slavery, University of Nevada, Reno,  
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office  
Joanna Jacobs, representing Dignity Health-St. Rose Dominican Hospitals  
Elisa P. Cafferata, President & CEO, Nevada Advocates for Planned Parenthood  
Grayson Wilt, representing Nevada State Medical Association  
Bruce H. Breslow, Director, Department of Business & Industry

**Chairman Hansen:**

[Roll was called and Committee rules and protocol were reviewed.] We will begin with Assembly Bill 267.

**Assembly Bill 267: Revises provisions concerning the sentencing and parole of persons convicted as an adult for a crime committed when the person was less than 18 years of age. (BDR 14-641)**

**Assemblyman John Hambrick, Assembly District No. 2:**

This bill deals with human lives—those individuals who made a mistake when they were younger, paid a price, and were incarcerated. We are trying to address an issue where a juvenile may have been 14 or 15 years old and was sentenced for an extremely long time, in some states, life without parole. When we are 14 or 15 years old, we make mistakes. We are trying to correct some of that in this state. Nevada is very forward-looking on some of these bills. We need to codify some of these issues. I brought with me James Dold, who is associated with the Campaign for the Fair Sentencing of Youth. He will walk you through the bill.

**James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth:**

Thank you for the opportunity to testify before your Committee. I am with the Campaign for the Fair Sentencing of Youth, which is a national coalition and clearinghouse that works with formerly incarcerated youth, family members of those who are currently serving extreme sentences, as well as family members who have lost loved ones to violence, to create more appropriate and fair sentencing standards for children when they commit serious crimes. I grew up in Las Vegas and went to the University of Nevada, Las Vegas (UNLV). I left for law school and ended up in Washington, D.C. I thought I would start by walking everyone through the bill, then go into a little explanation as to why the provisions in the bill are so important, and share some of the history of how we got here, both as a state and nationally.

The first section of the bill would require judges, at the time of sentencing, to consider certain mitigating factors relating to age and responsibility of children regarding their culpability. These factors are derived from the *Miller v. Alabama*, 132 S.Ct. 2455 (2012) decision. Essentially, the broad notion is that children are fundamentally different from adults. There are certain mitigating factors that have to be considered, such as age, his level of participation in the offense, whether an adult codefendant was present, any history of abuse or trauma, and what his role was in the particular offense. This is aimed at creating fairer sentencing standards by having a judge consider all of these factors at the time of sentencing to ensure that he is imposing a sentence that is both age

appropriate and fair considering all the factors of the youth who has committed a serious crime.

Section 2 of the bill would eliminate the ability to impose a life without parole sentence, in other words, sentencing a child to die in prison. That is a death sentence for a child because he will never become eligible for parole, and that is where he will stay. This would eliminate life without parole. It would still preserve life sentences. Judges will still have the ability to impose a life sentence. If the individual remains a danger to society, it is very possible and likely that he will remain in prison until he dies. It is just a matter of looking at an individual after he has had time to grow up and mature. If the parole board feels, after looking at certain factors of whether he has rehabilitated, has changed, and is remorseful, that he is fit for a second chance, then the board would have the ability to grant that parole. Aside from that, the sentence that would still be imposed in these cases would be a life sentence.

Section 3 deals with the parole eligibility provisions. Specifically, we wanted to ensure that the parole board is looking at certain factors relating to the fundamental differences between juvenile and adult defendants: the age of the prisoner at the time of the commission of the offense, the difference between both cognitive and the role of the juvenile, how those differences compare with adult defendants, and the maturity of the prisoner and the level of participation. All of these factors determine whether an individual has been rehabilitated and is deserving of a second chance. This also includes whether the person has engaged in any rehabilitative programming, availed himself of educational opportunities that have been made available to him, has shown evidence of remorse, and what he has done with his life since he has been incarcerated to turn his life around. That, in a nutshell, is the bulk of the bill.

I would now like to talk about why these provisions are so important. Starting in the late 1980s criminologists theorized that there was a new class of superpredator children who were coming of age. They were basing this theory on a juvenile crime wave that happened in the 1980s. Essentially they projected the juvenile crime wave was going to continue to increase. That did not happen, and by the time this theory came about, the juvenile crime wave had begun to decline. As a result of that hysteria around the superpredator theory, many states began passing transfer laws that made it easier to try children in the adult system. This opened up to children a number of different penalties that were primarily reserved for the worst of the worst adult defendants: the death penalty, life without parole sentences, and other de facto life sentences where kids were getting 100- to 200-year sentences. This ran counter to everything as a society that we know about children.

Nationwide we have laws that prohibit kids from buying tobacco and alcohol, entering into contracts, getting married, serving in the military, and voting. The only area that we were not looking at these kids being different was in the adult criminal justice system where kids as young as 12 years old were eligible for these very extreme penalties. Finally, in 2005, the U.S. Supreme Court began to step in and say, We have gone too far with these extreme sentencing penalties and we need to rein it in a little bit. Justice Anthony Kennedy, a President Reagan appointee, was the author of several of these opinions. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy highlighted a couple of things when striking down the juvenile death penalty and saying that kids cannot be sentenced to death and it is a violation of the Eighth Amendment. He first focused on this new emerging juvenile brain and behavioral development science that shows that the fundamental part of the brain that is responsible for emotional control, long-term planning, and decision making was not fully developed in juveniles. That is the prefrontal cortex. Instead, children relied on a more primitive part of their brain, the amygdala, to actually make decisions, which made the child more impetuous, more prone to risk-taking behavior, and more susceptible to peer pressure. For anyone with a teenager, I am sure you can relate to this. In fact, Justice Kennedy noted that these are things that any parent knows about children, but for the first time we had the scientific evidence to show that these were in fact fundamental differences between juvenile and adult brains.

The second thing that Justice Kennedy noted was the international consensus against both the death penalty and life without parole sentences for children. He specifically cites the United Nations Convention on the Rights of the Child, which categorically bars life without parole and the death penalty for kids. He also cites the fact that since 1990 there were only a handful of countries, including Saudi Arabia, Iran, Iraq, Yemen, and the United States, that had actually ever executed a youth—not exactly great company to be in. That was worth noting for the courts, that there was an international consensus against this type of practice.

The third thing that Justice Kennedy noted in the *Roper* decision is that there is great difficulty distinguishing between a juvenile offender who might be irretrievably depraved and is beyond rehabilitation and one who is not. Justice Kennedy highlights this great difficulty that the psychological community has in distinguishing between the two, because the child's brain is not fully developed and because of that he has a heightened capacity to grow, change, and become rehabilitated. Based on all of these reasons, the court strikes down the penalty for kids in *Roper*.

Five years later, in a case called *Graham v. Florida*, 560 U.S. 48 (2010), the court examines life without parole sentences for non-homicide offenses, again relying on everything the court said in *Roper*. The court, again in an opinion written by Justice Kennedy, highlights the fact that life without parole sentences are akin to the death penalty because the child will never leave prison alive, he will leave prison in a box; so it is, in fact, a death in prison sentence. He goes on to talk about the fact that most kids have a great potential for rehabilitation. There is a 50 percent decline in criminal behavior by the time juvenile delinquents who have engaged in criminal behavior reach the age of 22. By the time they reach the age of 28, there is a decline of 85 percent. There is no more recidivism for the vast majority of kids who engage in these types of serious crimes. That was very informative for the court, and they again struck down life without parole sentences for non-homicide offenses and held that states must provide individuals convicted of non-homicide offenses with a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Two years later in *Miller*, the court took up the issue of life without parole sentences for homicide offenses. Here the court ends up invalidating 28 sentencing schemes across the country and requires that sentencing judges consider the mitigating factors of youth any time a kid faces a potential life sentence. These provisions actually apply to states that had both mandatory life without parole sentences as well as discretionary life without parole sentences. Again, *Miller*, going back to everything that was said in *Roper* and *Graham*, comes up with this opinion and strikes down these sentencing schemes based on the Eighth Amendment.

Since that time, several state supreme courts have ruled on the issue of retroactivity of the *Miller* decision and whether the individuals who received life without parole sentences should in fact be resentenced under the *Miller* decision. State supreme courts in Texas, Mississippi, South Carolina, Florida, New Hampshire, Wyoming, and Massachusetts have all ruled that this decision should be applied retroactively and that the individuals who were previously sentenced to life without parole should get new resentencing hearings and the mitigating factors of youth that were articulated in the *Miller* decision should be considered at that time, looking at what sort of progress the individual has made since his incarceration.

Part of these decisions also highlight what we know about these juvenile lifers as well. Nationwide, there are about 2500 individuals, 16 in Nevada, who are serving life without parole sentences. Eighty percent of them witnessed violence in their homes and neighborhoods on a regular basis, 50 percent were physically abused, 20 percent were sexually abused, and 80 percent of the girls who are serving life without parole sentences were sexually abused. Over a third were homeless at the time of the offense, 25 percent are serving

sentences for felony murder, meaning they might not have been the individual who committed the homicide. Sixty percent committed the offense with an adult codefendant.

Given everything that we know about the juvenile brain and behavioral development science and how kids are susceptible to peer pressure and adult influence in particular, these characteristics helped inform the court as well that these kids are fundamentally different. That does not excuse the behavior; we are still talking about very serious offenses that kids need to be punished for, but it does help us to understand how kids could end up in these situations and why they might be more deserving of mercy than other individuals who are adults and commit similar offenses.

In response to these U.S. Supreme Court cases and the emerging juvenile brain and behavioral development science, several states across the country have begun to eliminate life without parole sentences for kids and create more age-appropriate and fair sentencing standards that are in line with A.B. 267. Let me highlight a couple of those states. In 2013, the state of Texas, in a special session called by Governor Rick Perry, eliminated life without parole sentences for children—Texas was actually one of the first states to begin paving the way for this in the wake of the *Miller* decision. Wyoming, Montana, Kansas, Kentucky, West Virginia, Massachusetts, Hawaii, Alaska, and Delaware have all enacted legislation to eliminate life without parole sentences for juveniles. The reason I highlight those states is because there is a broad geographic and political diversity amongst them. This is very much a bipartisan issue that we have seen across the country.

I would also like to point out that last month the American Bar Association in Resolution 107C called on all states and the federal government to eliminate life without parole sentences both prospectively and retroactively. We have several folks who have been supportive of these types of measures. We have been working with the National District Attorneys Association on a couple of amendments. One of the amendments that we discussed in the bill is to actually make sure that we distinguish between the homicides and the nonhomicides and increase the term of years that would be required as a mandatory minimum to serve for homicide offenses before the individual will become eligible for parole. That would only apply to a single homicide offense.

In closing, I think there are a couple of different ways to look at this issue. There is the one through a legal lens of everything I have highlighted from the Supreme Court cases, the emerging brain and behavioral development science, and also the moral aspect of this. Former Speaker of the House, Newt Gingrich, in an opinion of a bill from another state, wrote that Jesus calls on us to do



unto others as we would have done unto ourselves. If this were my child, how would I want him treated if he ended up in these unfortunate circumstances? I would want him to have a second chance. With that, Mr. Gingrich called on Governor Brown to pass similar legislation in California.

I happen to be Catholic and am a man of faith, and one of the reasons I am doing this kind of work is because of my faith. One of the things I am reminded of is Jesus on the cross. Jesus, when he was being executed by the Romans, calls out in one of his last moments, "Forgive them Father, they know not what they do." Because of that act of mercy, we as sinners were all saved. For me, looking at this issue, if our children are not deserving of our mercy, who amongst us really is? Part of this is about faith, part of it is about finding the moral center of the state of Nevada, the moral center of the United States, and with everything we know from a scientific standpoint, this really is great policy that has been enacted around the country. [Also provided written testimony ([Exhibit C](#)) and a United Nations report on life sentences for youths ([Exhibit D](#)).]

**Assemblyman Nelson:**

As I read section 3, subsection 1 and also the very last sentence of the bill, it appears that this will apply retroactively so that anyone who has already been sentenced to life without parole will now be eligible for parole, is that correct?

**James Dold:**

Yes, sir, that is correct.

**Assemblyman Nelson:**

Is that in line with the other cases you mentioned that were construing the *Miller* case?

**James Dold:**

Yes, the states' supreme courts that have weighed in on the issue are Texas, South Carolina, Mississippi—there have been 14 states' supreme courts that have taken the issue up and ten of them have ruled in favor of retroactivity of the *Miller* decision. The U.S. Supreme Court just granted certiorari in a case called *Montgomery v. Louisiana*, 141 So.3d 264 (La. 2014), and they will be deciding the issue nationwide probably within the next term.

**Assemblyman Nelson:**

Did *Miller* say anything about retroactivity?

**James Dold:**

I think the reason the bulk of the states' supreme courts have ruled for retroactivity is because there was a companion case with the *Miller* decision called *Jackson v. Hobbs*. *Jackson* was on collateral review; he had exhausted all of his direct appellate reviews. Many of the states' supreme courts, when reviewing this issue, said, Why would the U.S. Supreme Court have taken up *Jackson* unless they meant for it to also apply retroactively, because Mr. Jackson had been convicted in the 1980s? For them, that was enough evidence, plus looking at the issue of the *Teague v. Lane* 489 U.S. 288 (1989) analysis and whether it was a rule that was meant to be applied retroactively. From their perspective, it was a substantive rule because it removed a particular type of penalty from a particular class of offenders, which was mandatory life without parole for juvenile offenders, that was the underlying rationale for why they ruled for retroactivity.

**Assemblyman Araujo:**

Of the young children currently serving life without parole in Nevada, who is the youngest, and how old is he?

**James Dold:**

In terms of the age at the time of the commission of the offense, I think the youngest was 14 years old.

**Assemblyman Jones:**

Do you have any statistics on how many people would be eligible for this bill in the state of Nevada? Are we talking 50 or 100?

**James Dold:**

Sixteen that I am aware of.

**Assemblyman Thompson:**

For clarification, the retroactivity applies only if the offender has already served 15 years, correct?

**James Dold:**

Correct, there is still a life sentence being eligible for parole after 15 years. There may be some changes there through an amendment to make it 20 years for homicide offenses.

**Chairman Hansen:**

All of these things listed in section 1, do public defenders, judges, and juries consider this right now? These are serious capital offenses. Are these issues already being discussed prior to sentencing people in Nevada?



**James Dold:**

Not all the factors that were articulated by the *Miller* case are necessarily considered at the time of sentencing. At the time of transfer hearings, many of those provisions are considered; but not necessarily at the time of sentencing.

**Chairman Hansen:**

During the trial are those issues brought up?

**James Dold:**

Yes, sometimes, by the defense attorneys. They certainly could have been brought up, but they were not mandated to be brought up as the Supreme Court required in *Miller*. That is why, for instance, the South Carolina Supreme Court, much like Nevada, was a discretionary life without parole state. The supreme court in that state actually ruled that *Miller* was applicable to South Carolina because these mitigating factors were not specifically on the record and were not considered at the time of sentencing.

**Chairman Hansen:**

Regarding your comment on the development of the brain, is it not also true that in many adults who are convicted of violent crimes, there is a pretty consistent pattern of showing them to have substantially below average IQs, even though they are adults?

**James Dold:**

I cannot talk about the adult specifics, but in terms of the child brain development science, this is also relative in some of my comments that I mentioned before about the line we have drawn regarding what type of activities that we allow children to engage in. I think there has been a general recognition from the psychological community and also society more broadly that children do not have the ability to make as well-informed decisions. Certainly as neurological development continues to happen and the brain continues to mature, children become more able to make those decisions. As a general matter that does not happen until around 18 to 20 years of age. That is why the Supreme Court also drew that line in the *Roper* and *Graham* decisions because that is what we know from the juvenile brain behavioral development science: that the overwhelming majority of these kids' brains are still developing and maturing.

**Chairman Hansen:**

The concept is that you cannot have a life sentence without parole. Obviously the sentencing of juveniles has been going on for a long time and in many cases they have an opportunity for parole. What is the recidivism rate, traditionally, for people in the 14- to 17-year-old window who committed a very violent

crime, were sentenced with a possibility of parole, then repeated a violent offense after being released?

**James Dold:**

I do not have those statistics. I have broader national statistics that I cited earlier, which is what is called aging out of criminal behavior. By the time they reach 22 years of age, over 50 percent no longer recidivate and when they are 28 years of age, 85 percent no longer recidivate.

**Chairman Hansen:**

My concern is that we recognize that the psychology that was developed in the 1980s because of a crime wave may in fact be in error. On the other hand we are now dealing with a new psychological way of looking at this; are we going to release people who may in fact end up being violent again and murder someone else? My job, frankly, is to protect the interest of the public. I want to ensure that when we do a change like this, that down the road no one will say, Gee, Mr. Hansen, when you were chairman of the Judiciary Committee, you made it mandatory that these kids get out, now we have a repeat offender problem, where a kid murdered someone when he was 14, we let him out at the age of 30, and now at 35 he has murdered someone else. That is a very legitimate concern because recidivism, as you know, has been a consistent concern in the criminal justice system.

**James Dold:**

Before I did this work I worked on anti-human trafficking legislation. I helped draft this bill ensuring there were tough penalties in place. Nobody wants anyone who is violent on the streets, and nobody wants anyone to be hurt or injured. It is very important that if these individuals remain a danger to society, that they do not get out of prison. That is why there is still the mandated life sentence. With this bill the parole board would get the opportunity to take a look at the offender. If he has not changed and remains a danger to society, you are correct, he should spend the rest of his life in prison. We do know that the vast majority of kids change, so let the parole board take a look at them to determine whether they have changed and been rehabilitated or if they are still a danger to society.

**Assemblyman Hambrick:**

We have some formerly incarcerated youth who would like to come forward.

**Xavier McElrath-Bey, Youth Justice Advocate, Campaign for the Fair Sentencing of Youth:**

Whenever I come to these committee meetings, it is very emotional for me, because I reflect on my own personal experience. Today I am a youth justice

advocate for the Campaign for the Fair Sentencing of Youth. A part of my role is not only to advocate but also to coordinate a national network of former incarcerated individuals. That national network is called Incarcerated Children's Advocacy Network (ICAN). Currently we have 25 members. One thing that is reflective in our lives is that we were once deemed the worst of the worst. We were once deemed kids who will never change. We were given some very extreme consequences for some very serious offenses.

When I was 13 years old I was arrested, charged, and later convicted to serve a 25-year sentence in prison for my involvement in a gang-related first-degree murder. At the age of 13 I was in seventh grade. I probably weighed 112 pounds. I remember that because I was wrestling at the school that I went to, and I weighed 112 pounds. I was probably 5 feet 3 inches. At the time, what was spoken during my sentencing was the fact that I came from a very adverse childhood. Very early on I was placed in foster care because of the abuse of my stepfather. After two and a half years of being in foster care, I returned home to a place with a very dominant theme of abuse and neglect. I also had a family that contended with psychiatric problems. My mother was schizophrenic, my older brother was also schizophrenic. I had a very abusive and alcoholic stepfather who never hesitated in hitting us and kicking our dog. This is something that I experienced very early on, something that as a child I could not escape.

Unfortunately, a lot of that trauma manifested itself in very devastating ways. For the most part, because I was deprived of the most basic and fundamental needs—love and acceptance, and a sense of safety—unfortunately, at that age I sought it in the streets. When I felt that I had found it, I made some horrible decisions. Most importantly, I ended up making a very tragic mistake. I was responsible for the loss of another life. I played a role in what was the unfortunate demise of another youth. Not only that, but also a community and family that to this very day suffers.

I sit here to tell you that I live my life as an eternal apology to him and his loved ones. I live my life as a reflection that every child possesses a capacity to change. When I was in prison, I eventually matured; I grew and I came to discover who I really was inside. I came to realize that I really was not that little gangbanger punk. In reality, I had hopes that I wanted to live a normal life someday. I used to watch a program called *Saved by the Bell*. I am not sure if any of you have seen it. That show made me imagine, wow, what if my life was like that? What if there were no gangs and no drugs? What if my biggest concern was whether I was going to win the dance competition after school?

These are things that I fantasized about, but I also thought to myself, Xavier, it is not too late. You can do something with your life. You can get out and become somebody. So I got into school. I ended up getting associate degrees, an associate of arts and an associate of general education. Along with that I got a bachelor's degree in social science with a 4.0 grade point average. I never got an A before in my life, and I was getting A's while I was incarcerated. I was inducted into the Franklin Honor Society for outstanding scholarship. Soon after I was certified in computer technology. I had never been on the Internet, but I had a dream that I believed in.

Coming out, I was able to allow my life to be a reflection of that eternal apology. I have been working for the past 12 years in positions that were designed to keep children out of the criminal justice system and out of a grave. I have done quite a bit in terms of gang intervention, and violence prevention. I was an outreach worker, I was a juvenile justice diversion program coordinator with alternatives, and I also went on to work with Catholic Charities as a youth intervention specialist. Most recently, I did five and a half years of research with Northwestern University as part of Northwestern Juvenile Project, in which I interviewed and assessed the mental health needs and outcomes of over 800 formerly incarcerated youth, much like us. I came to realize that in all reality, we do have the capacity, that I was not the exception to the rule, and I became more and more inspired by individuals I had met and I realized that something had to be done. We had to do something in regard to sharing these inspirational, yet not uncommon, stories that kids can change. I really hope that you give these individuals in Nevada the same opportunity that I had.

**Mario Taylor, Member, Campaign for the Fair Sentencing of Youth:**

I was 15 years old when I was arrested for first-degree murder with the use of a deadly weapon. I pled to second-degree murder, which gave me two 10- to 45-year sentences. At the time, it was 1996, I was in the ninth grade. Just imagine a kid being told, in months, that you had to serve 90 years. I was sitting there in front of the judge, and she said it in months. I was trying to figure out how many years is that many months, because it was a large number. I was like, huh? She said it was 90 years, and I was like 90 years? She said, I cannot dumb down this crime; true enough, you are a good kid who made a bad decision, and I am going to punish you for that. Nancy Becker was my presiding judge. She said, What are you going to do now? I said, I am going to do the best I can with what I have considering the circumstances. Just imagine, I was the same height as Xavier, I weighed maybe 120 pounds in the ninth grade. I was in a cell with a grown man. Every day I would wake up in the cell with a grown man not knowing what would occur. Even though I was in a gang and I felt like I was really tough, I realized that I was not as tough as I thought I was. I was faced with so much adversity.

The only thing that I could honestly do—I felt hopeless—was to take full responsibility for my actions in the crime. I explained to everyone, I turned myself in, I considered that I was doing the right thing in hopes that I could give the family some type of justice, knowing that what I did was absolutely wrong.

His name was Christopher Beaver; I walk with him every day. His mother actually forgave me. I am truly grateful for that. I do not know where I would be now without her and her family and the fact that she actually said, I forgive you for taking my son's life and I hope that you do the right thing. She gave me the opportunity to do the right thing. It was because I actually had a chance to sit down and reflect on my own life and reflect on my own actions and I realize that five years was clearly not enough, ten years was probably not enough for me to actually be broken and realize that I needed to change my life. While incarcerated I got my associate in general studies with a 3.8 grade point average. I immersed myself in every self-help opportunity. I mentored the youth while I was in prison. I was the ideal inmate while I was incarcerated and I realized that, if I can do that in prison, why not take that same thing, if I get the opportunity to go home and have the chance to actually do this.

Upon being released, I found myself in this predicament. I thought, I have the opportunity now. There is an organization called Hope for Prisoners that actually helps people. I immersed myself with them and I help so many individuals who are coming home and who need jobs, help, and guidance. It is because I had the opportunity to come home and that someone actually believed in me and gave me that hope and I found that I am worth something and that I am not someone who just takes from the community. I can actually give back. I have done that and I will continue to do that. I will continue to do that every single day, and every day I walk with that on my mind, at the forefront. Every day I wake up and as I sleep at night I know that these are the things that have to be done. There is no day off. There is no moment where I can say, No, I am not going to help. I help every single day in one way or another. Without this help, there is no redemption for us.

I was someone who was considered helpless. I was someone who they said, just throw away the key. Both of my parents were on drugs; I really had no direction. I was living with my grandmother for a while, and that was the only hope I really had. Once I moved back to Las Vegas, it was all downhill from there. Knowing that, and then coming into adversity and committing a crime and going to prison, then getting out of prison and being given a second chance was the only reason I needed to actually do the right thing. I am grateful for the opportunity. I know a lot of the incarcerated youths that are in Nevada, and I actually walk and talk with them and I know that they deserve a chance.

If you give them a chance, I am pretty sure that they will be as successful as we have been.

**Sara Kruzan, Member, Campaign for the Fair Sentencing of Youth:**

I am from California. I was given a life without the possibility of parole sentence plus four years in 1994. I was convicted of first-degree murder. It is an honor to be here to be able to talk to you and let you know a little of my story, and also to put a human face to these young children who are sentenced as adults. I was sentenced at the age of 16; prior to that, I had goals, I had a 4.0 grade point average. I wrote a book about drugs and their effects. I had aspirations to be a pediatric surgeon, even though I was raised in an impoverished neighborhood by a single-parent mother who was addicted to drugs. The abuse that I endured did not really take effect until I was a little bit older. A nine-year-old child who has to endure the abuse from her mother is not able to comprehend what is happening to her, let alone be able to express the issues. From the time I was 9 until I was 16, the trauma that I experienced was so bad that I cannot even talk about some of it. I am not saying it justifies my crime by any means. I live every day with the remorse and the grief for taking someone's life, regardless of the circumstances.

However, I do understand that as children, we are faced with a lot of challenging situations, and those who come from a more challenging background, with the lack of parents and the lack of guidance, lack of understanding between morals, principles, and integrity. The decisions that I made were based more on the belief that I needed to survive or to stop the abuse that was happening to me. While I was incarcerated, I met many young people who also had the same experience as myself. Some of them were not able to handle the pressures of prison. I was in the Central California Women's Facility in Chowchilla, which is one of the largest women's facilities in the world. I was housed with seven other adult women. Being there as a child, going in weighing 118 pounds and having to share a very small space with grown women, was a trauma within itself. The lack of resources made available for those who are tried as an adult is also an obstacle for young people. At 16 years old, we do not understand the legal jargon. I just want to say that I do believe there are those who are incarcerated who, if given an opportunity to come before a board and to show who they are, they are worthy of a second chance.

**Marcus Dixon, Member, Campaign for the Fair Sentencing of Youth:**

At the age of 14 I was locked up and charged with first-degree murder with the use of a deadly weapon. That was in 1998. In 1999 I was found guilty of first-degree murder with the use of a deadly weapon and sentenced to 40 years to life. For the two years I was in the Clark County Detention Center, I never



saw my mom. She never played a major role in my life even before being incarcerated. My lawyer, Kristina Wildeveld, became more like a parent to me throughout the process of me going to prison. When I was introduced into prison there was a program called the youthful offenders program. I have remote asthma, which means it only flares up during the winter months. I was in the youthful offenders program and we had physical training, and I would do everything in my power to stay well and fit during the physical training. I remember that the person who was running the program said he wished every kid could be like me, that I always had drive. When I was 14 years old, I was offered a deal of 10 to 25 years for my crime. Being that I was 14 years old, I really did not understand tomorrow, so 10 years felt like the rest of my life. Now looking back on juveniles who are 14 years old and are charged as an adult for a first degree murder charge or any charge that can certify them as an adult, I honestly do not believe in my heart that they have the knowledge to make a decision as far as accepting a deal to go to prison. I did not understand 10 years. Then I was sentenced to 40 years to life; the only thing I wanted to do was go home. I never really had the understanding of the crime that I committed. I just wanted to go home.

When I was 18 years old, I started to get an understanding of the crime that I committed. I wrote Daryl Crittenden's family; his grandmother forgave me, which helped a lot because it was something that was always on me. Before she forgave me for the crime, I decided to live my life to let him live through me being that I took his life. So I did everything I possibly could. I went to school and got an education. I went to college. I did every program available in prison. I stayed away from gangs. I stayed away from drugs. I stayed away from most of the other inmates unless they were being positive. There were a lot of people in the youthful offenders program, one being Angel Diaz, who was around me the entire time. Our birthdays are close to each other. We studied philosophy, we went to college, we did everything and we always communicated with one another because he was 15 years old when he was arrested and he was also sentenced to life. Throughout the process of prison, he and I were always around each other. There were two other guys I met named Christopher Williams and Juan Castillo, they were sentenced to life without the possibility of parole. The only desire that we all ever had was to be better people and one day have a chance to be back in society.

I have been out of prison for two months. I have a job, a house, and a car. I just opened my first bank account. I graduated from Hope for Prisoners. The only thing I want to do is move forward in life. I have been speaking to youths since I have been out of prison and trying to get inside juvenile justice centers in Las Vegas to talk to juveniles. I have talked to a lot of people and they tell me the only reason I cannot get into the juvenile centers is because of

my background, but they believe I have a great story and I can help kids. I have spoken to a couple of kids. Friends of mine from before I was incarcerated have children. One of them is getting into trouble, and I have spoken to him. His mom told me since I have spoken to him, he asked, how come his dad is not like me, and his dad has never been in prison. I want to be a part of this kid's life because I do not want him to go down the same path I went down. He is 13 years old. He is now starting to do better in school as far as bringing his grades up.

My nephew is about to be 18. He told me the only reason he stayed out of trouble is because he always listened to me as far as me giving him advice the entire time I was in prison. He told me I am more like his dad than his own dad and his dad has been in his life the entire time. He told me he looks up to me. I explained to him today me and him can grow up together. What I should have been doing at the age of 18, I have to do today at 31.

I am extremely thankful that I do everything that I possibly can because I am free. I can help people the way that I wish I could have been helped. I believe in my heart that every kid has a chance and an opportunity to learn, and if I can help them I am willing to do whatever I can. I talked to some people who were in prison and they asked me how is it being free. My response is, I do not believe I should have ever left the free world in the first place. I believe that everyone deserves a chance. I was 14 years old, I did not understand anything until I was 18, then I started to understand what was going on in life.

Today, I am 31 years old; I did 17 years in prison, and I was fortunate to have my sentence reduced. I am here doing everything I possibly can and I will continue to do everything I possibly can. I am thankful for this opportunity. Another thing I am thankful for is the justice system because I did learn. I even saw my district attorney who had me found guilty, and I thanked him because I felt the need that I should have been punished for the crime I committed. I do not believe that I should have spent 40 years in prison. I would have been 54 years old. I am thankful that I have the opportunity to start my life today.

**Traci Rutherford, Member, Campaign for the Fair Sentencing of Youth:**

I was charged with first-degree murder when I was 16 years old. The victim was my stepbrother. I had the unique opportunity at that point to be a part of the grieving process of my family and being the victimizer. I was not the one who committed the murder. I had an adult codefendant who committed the murder. I was scared and kept my mouth shut so I was charged with the crime as well. I will not take much of your time; I would like to highlight a couple points. In the 15 years I was in prison, I got my high school diploma, got a college degree, and started programs. I went through intense and extensive



mental health programs to try to figure out what behavior led me there and fix those problems to become a better person.

I am not a criminal; I was charged with a crime, but I am not a criminal. I am now a taxpayer, a voter, a military wife, and the mother of a beautiful eight-month-old. I am a wonderful productive citizen of society. I was given the opportunity to learn from my mistakes. As a youth, teenagers make dumb decisions. I learned from my mistakes, as have ten other juveniles who I was incarcerated with. We would sit outside and talk about the changes we have made, what we wished we were doing, the opportunities we wished we had, but we had made mistakes.

I learned my lesson after about seven years. It took me about seven years of bumping my head against a brick wall, sometimes literally, to figure out changes that I needed to make to move forward and to stop being a little kid who made little kid decisions. I am now a mentor for juveniles. I try to contribute as much as I can to my community. I now live in Seattle, Washington. I did my time here in Nevada.

My family is all very supportive of me. My stepmother and I are still very close. She is still married to my father and we have a very close and personal relationship. She understands that I made a mistake as a kid. She is the most amazing woman I know. I live every day of my life knowing that I need to make her, my family, and especially my stepbrother, the victim, proud, so that he did not die in vain. Kids change. After 15 years, a review will not necessarily get you out of prison. It is an opportunity for review and for modification. It is an opportunity to see if you have grown. That is what is important: to see if we are not just throwing away taxpayers' money and locking kids away forever, ruining life after life after life, because this has a ripple effect. It affects the family of the people who are in prison. It affects the victim's family. Most of the time, there is opportunity, there is growth, there is a time and after 15 or 20 years, it is just a review. I think you would be very pleasantly surprised at how many youth do change. They did make juvenile decisions.

**Bridget Walsh, Private Citizen, Reno, Nevada:**

I am a developmental scientist and a recent tenured professor. I spend all the hours of my day studying child development. One thing I want to underscore is the robust finding that the prefrontal cortex responsible for thinking, planning, and higher-order thinking is not really developed until the age of 25. Before that time, the limbic system is overactive. We expect young children to have unbalanced brains. We expect them to make emotionally driven decisions and not demonstrate dialectical thought—considering a thesis and antithesis and forming a synthesis—which is characteristic of adult thinking. Before this

time, adolescence is a time of heightened risk-taking due to the unbalanced limbic system and the undeveloped prefrontal cortex. There has been some research conducted by Dante Cicchetti that looks at children who have been maltreated, sexually abused, physically and emotionally abused, whatever the maltreatment may be, and for them the limbic system might always be out of whack: the amygdala, the hippocampus and the hypothalamus. But because the brain has a degree of elasticity, there is a degree of hope combined with realism that individuals can change in adulthood. [Also provided written testimony ([Exhibit E](#)).]

**Kristina Wildeveld, Attorney, Nevada Association of Criminal Justice:**

I am here as a representative of the Nevada Association of Criminal Justice, and as a private criminal defense attorney who has spent the majority of my 20-year career working toward numerous reforms this body has passed and indeed this very bill you are considering today. [Continued to read from prepared testimony ([Exhibit F](#)).] Murder with a deadly weapon at the time, and still in place for most, was 40 years to life, so those kids who are now incarcerated did not have any other option. There was no transfer hearing, there was no ability to present mitigating evidence. Their sentences were 40 years to life, life without the possibility of parole, and for some, the death penalty. Many of them who were facing life without the possibility of parole were threatened with the death penalty when they first came to court and pled to life without the possibility of parole. They had no other choice. That is true whether they were the principal actor who took a life or just a conspirator or an aider and abettor. [Continued to read from prepared testimony ([Exhibit F](#)).]

**Connie Bisbee, Chairman, State Board of Parole Commissioners:**

I appreciate this bill, and I understand the heart of it. I will make a suggestion, however, that when considering this bill, maybe if you narrow it down to section 2 and pass that the sentence of death or life imprisonment without the possibility of parole cannot be imposed on a perpetrator under the age of 18. I will tell you that the brain science is well known by the parole board; I suspect it is also well known by our court system. We consider everything about everything in any parole situation. I understand why you would not want to sentence a juvenile to life without parole or death and can support that. I do think it could be simplified to just approve section 2. When you start talking about a 15-year period, in July, 2014, it became law that we have an aggregated sentencing scheme in the state of Nevada. That means if you have a young person who commits a crime and gets consecutive sentences, for example, the crime is such that there are four consecutive sentences and they are all 10 years to life. Under mitigation, the way the court must sentence, in terms of what is going to appear on the judgment of conviction, is that four consecutive sentences of 10 years to life will turn into one sentence of 40 years

to life. If you go into this maximum of 15 years before you consider this youthful offender for parole eligibility, I am not sure how you would apply that to Nevada's aggregated sentences.

We have a very good pardons board here. There are a lot of things that happen that if there are specific situations about a particular case, even with the example I gave earlier with the 40 years to life, they have the opportunity to have the pardons board review it and reduce the minimum sentence. I would encourage you to concentrate on section 2. I think that the authors of the bill did not necessarily think of all the particularities of the sentence structuring in the state of Nevada. Both the courts and the Parole Board are very aware of the youthful brain issues.

One of the things that most of the youthful offenders who spoke said—the very important part that you need to hear—is that they received education, they got job skills, they came out of prison with the ability to act as responsible taxpaying adults. If you take that same youthful offender and you put him out or require that he goes out early and he does not have those particular skills, you have not done anything for him. If you do not meet those requirements while a young person is in prison, you do not do him any good by putting him out. You do not do public safety any good by putting him out. The stories you heard this morning were from young people who were in the right systems and received the right education and the right treatment. I encourage you to look at this bill but concentrate on section 2. I think that if you just pass section 2 as change to the law, you will meet the heart of the bill. I am neutral on this bill.

**Rita Sloan, Coordinator, Alternatives to Violence Project, Reno, Nevada:**

The Alternatives to Violence Project (AVP) conducts workshops in prisons. They are intense workshops to help someone consider the possibility of changing her ways. We have been doing these workshops for probably 13 years. I have been with the program for almost 12 years. I will never forget the first time I met a man who told me he had been in prison for 18 years, and he was 35. I was shocked. I could not believe that someone that young was in prison. Sadly, since then, I have met many such people. I am no longer shocked. As a mother of five and a grandmother of ten, it breaks my heart to think of putting children in prison. To put a child in prison for the rest of his life makes no sense to me.

I would like to say I personally know one of the 16 currently serving. He has been part of the AVP as an inside facilitator for five or six years. This man had already been on a path of positive change in his life when he encountered AVP, but he credits AVP with furthering himself down that path of positive change. He is an excellent facilitator. It is an all-volunteer program; he gets no benefits

from the prison for being a part of the program. He does it because he can help and encourage other people to make these positive changes in their lives and he continues to grow as a fine person. I strongly urge the passage of this bill, retroactively.

**Tim O'Callaghan, representing the Roman Catholic Diocese of Las Vegas, and representing the Religious Alliance in Nevada:**

I am the youngest child of the former Governor of Nevada, Mike O'Callaghan. This will most likely be the only time I introduce myself as such and for a good reason. My father was not only the governor of this great state, he was a chief juvenile probation officer, a Clark County school teacher, and a boxing coach among other accomplishments. [Continued to read from prepared testimony ([Exhibit G](#)).]

**Mike Dyer, Director, Nevada Catholic Conference:**

The Nevada Catholic Conference is the vehicle through which the Catholic bishops in the state of Nevada speak on matters of statewide importance. I am here today to state that the bishops and the Catholic Church in Nevada strongly support the passage of this bill.

**Marvin Neal, President, Sierra Nevada Teen Ranch:**

For most of my adult life I have devoted myself to serving Nevada's at-risk youth. For the last 25 years I have volunteered at the Jan Evans Juvenile Justice Center. I do this because of the problems I had as a youth, growing up in a dysfunctional family, a family where there was no father figure or role model to teach me what was right and how to do right. As a consequence of that, I did time on a six-to-life sentence in California, followed immediately by a 24-year sentence in Nevada. However, while doing that time, I remember two men came into a dormitory where I was and said something that totally got my attention, and it has changed the course of my life. They said, You know, it does not matter why you are here, God still loves you and he cares about you. If you let him, he can take this mess that you made of your life and make something good come out of it. That pierced my heart. I wanted that. I did not know if it was true, but I wanted that. I was looking at six to life in California, and up to 30 years in Nevada. I was also looking at an armed robbery charge in Wisconsin. If I looked at all of that, my first thought was to commit suicide, because I thought I had ruined my whole life. My thought was to just end it now and get it over with. However, those words would not leave me.

I will fast-forward to today. Today I am the chaplain at the Jan Evans Juvenile Justice Center. I think that all of you would agree to go from being an ex-felon, serving time in a correctional facility, to being appointed to a position of authority in an institution, it speaks not only to rehabilitation, but a high level of trust as well. I am here today in support of A.B. 267 because I was given another opportunity. As chaplain, where I have worked with young people for the last 25 years, I have seen a number of young men who are in prison right now for murder, serving life without the possibility of parole. What I have learned from this experience is that these young people are no different than myself. Given the right opportunity, these young people can become highly productive citizens in our community again. I would encourage all of you to support this bill, because it would give them an opportunity to do something that can help them become productive in society.

More times than not, as we have heard from the other young men and ladies who have already done time on a murder charge, when they come out, they really want to do something to help, not continue the destructive path they were on. They received the right intervention, and I believe that if we give these young people that intervention and that help, we would find them out there doing similar work to what I am doing.

I can tell you, over my 25 years, I have ministered, mentored, and counselled thousands of young people. One of the reasons I was appointed as a chaplain was because the chief of juvenile justice called me into his office and said, Marvin, we need to have a chaplain, someone who can mentor and counsel these young people when we cannot let them out when there is a tragedy that has happened at home. We would be remiss if we did not offer you that opportunity, because we see your ability to connect with these young people and to work with them in a way where they gravitate toward you. I believe the first time that I went into the Jan Evans Juvenile Justice Center, I went in just to share my testimony of what God had done in my life. Over 90 percent of the kids there stood up and invited God into their life. I have continued to see that happen over the 25 years that I have been there. More importantly, for the majority of the young people going to that detention center, this is voluntary. They choose to come in because they are looking for help. I am asking you to give them that help. To give them a second opportunity.

**John T. Jones, Jr., representing the Nevada District Attorneys Association:**

I would like to say that we are in support of this bill. We do have some issues with the retroactivity portion. We are working out those differences with Assemblyman Hambrick and James Dold.

**Megan Hoffman, Private Citizen, Las Vegas, Nevada:**

I am the chief of the Non-Capital Habeas Unit of the Office of the Federal Public Defender. As a result of that representation I have had the opportunity to represent several juveniles who have life without parole sentences in Nevada. I have been asked to speak today specifically on the development of the law in Nevada on this issue. You have heard from countless examples of juveniles who have changed their lives once given a chance for release from prison. The juveniles from Nevada that you heard from today were fortunate enough to be given the chance for release. They, however, did not have life without parole sentences. I want to be clear that what we are talking about today are the 16 inmates who cannot speak for themselves because they remain incarcerated. In Nevada, their sentence is literally a death sentence. One of the Committee members asked earlier what the age range is. There appear to be approximately three 15-year-old juveniles, the rest are 16- and 17-year-old juveniles. We have attempted on many occasions through various measures to obtain firm data from the Nevada Department of Corrections and have been unable to do so as they apparently do not keep any sort of records on inmates who came into the prison as a juvenile.

As you heard today, the United States Supreme Court has recognized that if death is different, so are children. While the court recognized that the cases before them were indeed vicious, they also recognized that the Eighth Amendment of the *United States Constitution* prohibited sentencing children to a de facto death sentence. What the law basically holds is that the children must be provided a meaningful opportunity for release. That is all we are asking for in this bill: a meaningful opportunity for release. Earlier there was testimony in opposition concerning the parole factors. I would like to make clear that what we are asking for here is a change. The juvenile life without parole defendants do not have an opportunity at this point in time to have their sentences aggregated, they do not have an opportunity for release, they do not have an opportunity for parole, and the majority of them do not have an opportunity for pardons. There is no opportunity but this bill.

We are asking to increase the bill to 20 years rather than 15. That would make these defendants who have served 20 years immediately eligible for parole. That is complying with the U.S. Supreme Court mandate that children be provided an individualized determination and an opportunity for meaningful release. That does not mean that any of those young men will in fact be released; it simply provides them an opportunity to do so. For those who have only a murder sentence, they would immediately be eligible for parole; it has nothing to do with the aggregate sentencing. Further, in response to the testimony about any danger in releasing them before they have had an opportunity for programs, I also believe this bill covers those concerns. This bill



releases no one or provides no one with opportunity for release until they have served a minimum of 15 years. We are asking for 20 years. All of the people who have spoken to you today have served 20 years or somewhat less and were able to complete the programs that made them such productive citizens upon their release. [Also provided written testimony ([Exhibit H](#)).]

**Chairman Hansen:**

Is there anyone who would like to testify in opposition to this bill? Seeing no one, is there anyone else who would like to testify in the neutral position? [There was no one.] [Other exhibits provided include: ([Exhibit I](#)), ([Exhibit J](#)), ([Exhibit K](#)), ([Exhibit L](#)), ([Exhibit M](#)), ([Exhibit N](#)), and ([Exhibit O](#)).] I will close the hearing on Assembly Bill 267 and open the hearing on Assembly Bill 276.

**Assembly Bill 276: Provides certain protections and services for victims of human trafficking. (BDR 16-1005)**

**Assemblyman John Hambrick, Assembly District No. 2:**

Assembly Bill 276 should be very easy for you. This bill was before this Committee last session. It received unanimous approval. The bill then went to the other house and it passed unanimously there as well. The problem came when it reached the floor. Senator Segerblom had a minor amendment, which I agreed to. It came on the floor just before sine die for concurrence. Then Majority Leader William Horne killed the bill. Although it had unanimous consent on both houses, he killed the bill. This is an identical bill. It is not a human trafficking bill; it is an education bill. It will address and give benefit to school teachers, counsellors, and nurses to get materials to help educate themselves and to recognize potential victims of trafficking in schools. There is a provision about signage, which Mr. Breslow has some concerns with. Again, this bill is an educational benefit bill where the victims can go to law enforcement, counsellors, or reach out to anyone in the public service area; they can get help and guidance. Mr. Dold is again the author of the bill. Again, this is not a human trafficking bill, but more of an education bill aimed to reach human trafficking victims in a most beneficial way.

**James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth:**

I would like to begin by telling you a little about my personal story and how I became involved in the issue of human trafficking. I mentioned earlier that I grew up in Las Vegas. One of the reasons that this issue is so personal to me is that I was actually a victim of child sexual abuse and child labor exploitation. When I was 13 years old, I was in the Boy Scouts, and one of the parents of another Boy Scout began grooming me and taking advantage of some of the insecurities I had. I grew up in the inner-city and was the only one in my family to eventually graduate from high school. I grew up in a drug-infested

neighborhood, and I was looking for love that I did not think I was getting from my family. This predator was there to prey on those insecurities in a place where I should have been safe, the Boy Scouts and in a church; unfortunately, I was not. That is where my predator found me and eventually convinced me to run away from home. I did, and for a little more than two years, I lived in a house where I did everything from cooking to cleaning, to being sexually abused. I was called a "nigger" so many times I cannot even tell you. It was one of those things that always stuck with me. At that time I did not even know about human trafficking. The federal human trafficking laws had not even passed yet—this was pre-2000. Luckily, I was able to escape that situation and eventually move back in with my parents. Thankfully, because of coaches and amazing teachers I had, I played football at Valley High School and was very fortunate to have mentors who supported me and put me on a path where I was able to do well. Of course, coming from that situation, you never fully get over it. You live with those scars. It was not until I was much older that I realized what happened to me. I came forward and contacted Las Vegas Metropolitan Police Department (LVMPD). Unfortunately, the statute of limitations had expired, which I also think is something that should be looked at: extending the statute of limitations for child sexual abuse victims and child human trafficking victims. I was not comfortable coming forward until I was nearly 28 years old. Especially being a man, it is a little bit different as well. Parts of this bill are so amazing because, first and foremost, it provides teachers and students with information about human trafficking. For pimps and traffickers, people who exploit our children, the number one place they recruit is right out of middle and high schools, eleven- to fifteen-year-old girls and boys. They go on Facebook. They hang out at malls. Similar legislation has passed in states like Virginia and Maryland. As a matter of fact, I heard recently that several school students in Virginia came home and told their parents how they got this training and the materials that were provided to them. Teachers were more able to spot the warning signs of trafficking, to get more involved and alert school nurses and school psychologists and to get in contact with law enforcement. That is an important component because it is the preventative side that has never been addressed in Nevada, preventing terrible human rights abuse from happening in the first place. That is one important component of the bill.

The second component is the mandated posting of the National Human Trafficking Resource Center (NHTRC) hotline number, which is the hotline that feeds tips to the Federal Bureau of Investigations (FBI) and the local law enforcement. They have done an amazing job working at both the state and federal level, helping to get victims out of human trafficking situations as well as ensuring that law enforcement has the necessary information they need. To provide some statistics, in 2014, the NHTRC hotline fielded 5000 cases of



human trafficking from across the country. Nevada ranked fifteenth in those cases that were reported, with 110 calls coming directly into the national hotline. You can only imagine what those numbers would have been if the signs had been posted in these places that are highlighted. Those places are where victims are most likely to come into contact with it. Places like sexually oriented businesses, schools, bus stops, truck stops, places where victims are more likely to frequent and where pimps are more likely to be. This is, in effect, a lifeline to human trafficking victims to provide them with that hope to be able to escape.

One of the other very important parts of this bill is providing victims with information regarding resources. Right now we have about 100,000 United States children who are victimized or exploited in prostitution every year. That is according to the National Center for Missing and Exploited Children. I do not know if LVMPD is going to be testifying, but I am sure they will tell you that about 100 kids every year are picked up on the Las Vegas Strip alone. This is a huge problem. I often talk about how I love my state and I love the city where I grew up, but Las Vegas is, in many ways, the sex trafficking capital of the United States for a whole host of reasons: there are a lot of interstate highways; it is close to a border state, which makes it easier to traffic people in and out of the state; and there is a connection right to Los Angeles. Traffickers rarely stay in one city. They move around. Individual pimps will take stables of young girls across the country. They will go from San Francisco to Los Angeles to San Diego, out to Las Vegas and onward. It is not uncommon for the FBI to break up rings that range not just from California but all the way to Georgia and back up to Washington, D.C. Making sure these hotlines are available so that when victims or community members are able to come forward and provide that information to the hotline, that information will be passed along to law enforcement to ensure they crack down on this terrible scourge.

This bill is an amazing bill, these provisions have been passed across the country; they are provisions that are also contained within the Uniform Human Trafficking Act, which is an act that I worked on. These are things that have been adopted and accepted nationwide. Assemblyman Hambrick, you were the first person in Nevada to bring this issue forward and have been fighting for it since day one. On behalf of myself and so many other children like me who never had that voice, I want to thank you personally for that.

**Chairman Hansen:**

It is true that Speaker Hambrick has been a tireless advocate for this issue, trying to resolve this problem as much as possible.

**Assemblyman Gardner:**

Section 1, subsection 2, paragraph (d) states, "Upon the request of the victim, provide the victim with one or both of the following forms issued," which are the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons or the Nonimmigrant Status Certification. What exactly do those forms do and why are they in this bill? This seems to be more of an education bill, so why are we having these forms in here?

**James Dold:**

Specifically, the I-914, Supplement B forms are the certification forms that law enforcement use to give people who may have been brought here illegally by the traffickers a temporary status to help them investigate the cases. Essentially this is something that was created in the Human Trafficking Act of 2000 that President Bush signed into law. This incentivized victims of human trafficking who are foreign national victims to cooperate with law enforcement here in these United States to be able to bust the traffickers, whether the traffickers are foreign nationals elsewhere who brought them here or traffickers here in the United States. It allows the victim to have a temporary status because if they have been brought here illegally, they are still technically here illegally and subject to deportation. This form is provided by the Department of Homeland Security and completed by law enforcement to ensure that all of the victim's paperwork is up-to-date.

**Assemblyman Thompson:**

I would like to address section 5, regarding the enforcement. Is this something that the Department of Business and Industry will be responsible for, the enforcement of all of these establishments?

**James Dold:**

Section 5, subsection 3, states "The Department of Transportation and the Department of Business and Industry shall develop a model sign..." The thought is, that is where the enforcement mechanism will come in. Again, this is just a basic civil penalty, it is not meant to overburden any businesses, but we want to ensure these signs are posted. Certainly, for the Department of Transportation (NDOT), in city-run bus stops, that is something they can do themselves. The enforcement mechanisms for the private enterprises, that was meant to ensure they are complying with the sign requirement.

**Assemblyman Thompson:**

With all of the businesses and industries that are listed, have you had a chance to get an idea of their support and compliance with this?

**Assemblyman Hambrick:**

The answer is yes and no. The Nevada Trucking Association is very active in this. Their drivers have signs on the windows of the trucks. The interstate truckers are putting these on their windows so they are visible in truck stops. The petroleum industry, who runs the truck stops, is very active also. Mr. Breslow, from the Department of Business and Industry, has some minor concerns about the signs that he may discuss today. The signs are very effective in Colorado truck stops. This is having an impact on the victims as they walk through the truck stop and see the signs. They are going to the truckers and asking for help.

**Assemblyman Jones:**

I looked up human trafficking because I was a little confused because I was thinking of the movie *Taken*, where the girl gets taken and is put someplace, but human trafficking is basically when a person takes a minor and keeps him imprisoned and utilizes his services or forces him into prostitution. But the bill also discusses older persons being victims of human trafficking. How does that reconcile?

**James Dold:**

The basic definition of human trafficking is anytime the use of force, fraud, or coercion is used to compel someone to engage in labor, services, or commercial sex, or when a child is induced to engage in a commercial sex act. This bill was trying to ensure that the most vulnerable people, both the children and elderly adults who might be trafficked and exploited, make sure they are provided with the proper resources and that the proper authorities are notified, so that law enforcement can say, We have a very elderly person who has been exploited either in labor or commercial sex, and that she has certain rights and is taken care of and not left on her own. At both ends of the spectrum there are very vulnerable people, children and the elderly, and we want to ensure that both are taken care of.

**Chairman Hansen:**

I will now open the hearing to anyone who would like to testify in favor of A.B. 276.

**Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:**

I am here to express our strong support to A.B. 276. During the first week of this session, I had the privilege of giving you some history and an overview of our efforts to combat trafficking in our state. I pointed out that there are four components to our efforts to combat trafficking: prevention and awareness, investigation and prosecution, treatments and services, and developing reliable data on the extent of the problem. This bill focuses on

two of those components, the prevention and awareness piece and the treatment and services for victims piece. For those reasons we support this bill.

**John T. Jones, Jr., representing the Nevada District Attorneys Association:**

We are also here in support of A.B. 276. We would like to thank the Speaker. Over the years he has been a leader in this issue. We have had numerous meetings in our office with Speaker Hambrick where he has encouraged law enforcement to be creative with respect to human trafficking. With respect to letting victims know, specifically in Clark County with juveniles, we do have a system where we try to link victims of sex trafficking to services. We appreciate this bill and are here in support.

**Paul Enos, Chief Executive Officer, Nevada Trucking Association:**

We are here in favor of A.B. 276. I would also like to thank the Speaker for being a leader on this issue. In 2012, we recognized that this was an issue that really did impact the image of the trucking industry. Unfortunately, a lot of this activity happens at rest stops; it happens at truck stops. Our drivers are being solicited. When you walk through a truck stop, you may see a little sticker on the window with a lizard and a red ban sign through it, meaning no "lot lizards." A "lot lizard" is a derogatory term for a prostitute who works at a truck stop. I have seen those signs all my life. It was not until 2012, when we were contacted by a group called Truckers Against Trafficking asking us to get involved in Nevada that we realized these were not people who were working the truck stops at their own volition. Many of these people had been kidnapped and put into servitude. They are victims. We had a role, as an industry, to educate our truck drivers to not just ignore the problem, when you are solicited on your radio, or you hear the knock on the cab of your truck, but to take action. One of the things that Truckers Against Trafficking does is produce wallet cards that we give to all of our drivers. We also have a 28-minute DVD to educate our drivers. We tell our companies, when you hire someone, and at your safety meetings, show your employees these videos so they can recognize what the signs are of someone being trafficked. One of the things I tell the drivers is that it is okay to be wrong. If you have a suspicion, call 911 and then call the hotline. We ask the drivers to call 911 because we think that with law enforcement being able to have that direct connection, we can rescue some of these young girls and boys from these awful situations.

We think the truckers are the eyes and ears of the road. Just last month in Virginia, we had a truck driver recognize a victim of sex trafficking and he was able to rescue a young girl from her pimp. Unfortunately, this does happen at truck stops. We do have a lot of our drivers with the stickers on their windows with the hotline number. We have our truck stops hang posters in their facilities and also hand out the wallet cards to make this issue more in the forefront and

more difficult to ignore. We do appreciate the industry doing this, we appreciate this bill, and we also appreciate law enforcement. I visited with Chief Dennis Osborn from the Nevada Highway Patrol to look at the strategic plan for the next three years. One of the issues that is being addressed is human trafficking and working with the other law enforcement agencies. We have worked with almost every law enforcement agency in Nevada on this issue, talking about it and creating awareness within our industry. I think this bill giving our law enforcement partners the training to identify these folks and making it more available at the place where victims are trafficked is a good thing.

**Assemblyman Elliot T. Anderson:**

Mr. Enos, I just want to say this is a good program and thank you for being involved in this.

**Assemblyman Jones:**

The fourth component you mentioned is developing reliable data. The testimony I have heard, like Las Vegas is the capital for human trafficking, do you have any statistics of how many young victims have been recovered, and how many pimps have been prosecuted from these human trafficking laws?

**John Jones:**

I see Esther Brown in Clark County. She was a coordinator for victims of sex trafficking in Clark County, and I think she would be a great person to direct that question to.

**Terry Care, Uniform Law Commissioner, Uniform Law Commission:**

The Uniform Law Commission is made up of about 350 members who are all attorneys, judges, both federal and state, trial and appellate court, law school professors, several dozen legislators, representatives from various attorney general offices. We meet once a year, but we have ongoing committee meetings to try to identify issues that we believe are emerging and should be codified as state law. It is a process that may take two to three years to come up with an act. Normally we deal with the world of commerce and try to have uniformity between the states where the rules are the same no matter what jurisdiction you happen to be in. It is rare for us to get involved in the world of criminal law, but we identified human trafficking as something so significant that we thought we should be involved.

In 2013, the Uniform Law Commission adopted the Uniform Act for the Prevention of and Remedies for Human Trafficking. The reason I am here is that when our committee did research, we came up with the same numbers that Mr. Dold referenced, the 100,000 United States children each year being

brought into prostitution. Worldwide, there are approximately 27 million people each year who become victims of human trafficking. In this country about 80 percent involves prostitution. The other 20 percent is forced labor. What happens is that many of these victims are later coerced into becoming recruiters and traffickers themselves. The purpose for me today is to let you know that the Uniform Law Commission, even though it has its own standalone act, is in support of this bill because of sections 1, 2, and 5. The Uniform Act has very similar concepts. Not word for word, but the concepts are there. I wanted to let you know that the Uniform Law Commission stands in support of this bill. I am also going to compliment the work that Speaker Hambrick has done on this subject. I remember when he arrived in Carson City in 2009, he had a couple of bills then dealing with asset forfeiture and soliciting minors. He has had subsequent bills and has come a long way in the state.

**Esther Rodriguez Brown, Founder, The Embracing Project:**

Last year, according to data that Dr. M. Alexis Kennedy collected through juvenile court, we had 202 minor victims. Of those 202, one is a male. Of those 202, I serve 189. I am here on behalf of all of those that I serve and that I do not serve because we do not know where they are. I support this bill and am thankful for Assemblyman Hambrick for all the hard work he has been doing. I support every aspect of the bill, including putting the hotline number in businesses. Since the time I have been here this morning, I have received two text messages from two girls who are trying to get services and are now over the age of 18. Yes, our children and our elderly are vulnerable, but many of our adult victims are being lured into sex trafficking when they are children. That does not mean that they do not have the hope and the desire to get out of that life. We cannot forget about the victims between 18 and 25; they are still struggling with extreme violence. I am here to support this bill 100 percent.

**Assemblyman Jones:**

My understanding is there were 202 victims who have been recovered from sex trafficking. Was that last year?

**Esther Rodriguez Brown:**

Correct, 202 minors.

**Assemblyman Jones:**

Do you know how many pimps or perpetrators were associated with that?

**Esther Rodriguez Brown:**

I have recorded data from my own services, and over 59 percent of the girls have one or more pimps involved. I do not know how many of them were prosecuted because sometimes due to fear, the girls do not want to cooperate with law enforcement because there is no safety for them after they testify.

**Sara Kruzan, Campaign for the Fair Sentencing of Youth:**

I am a survivor of child sex trafficking. The indoctrination began when I was 11 years old, until the age of 16. That is whose life I took and was sentenced to life without parole. In 1994 there were no laws to protect young people who were sexually trafficked, nor was it acknowledged, nor was the language made available for those who represented me inside the courthouse, as well as the judge. Now, in California, there are laws that have been put in place to protect individuals like myself. I totally support this bill. I feel that it will help many young people. Being a survivor of sex trafficking, it is something that will stay with me for the rest of my life. It is not easy to erase, regardless of me being a productive upstanding citizen in the community today. I work with young people who have been sex trafficked themselves, help them reestablish themselves in the community and build their self-worth as a person.

Again, I thank you for taking this situation seriously because it is a very serious issue and one that has been happening for a very long time, and many people want to close their eyes to the issue. Young people do not make a decision to be trafficked, and these pimps and predators know how to manipulate your mind and destroy any beliefs about any positivity in regards to looking at the world. I just want to say thank you.

**Chuck Callaway, Police Director, Las Vegas Metropolitan Police Department:**

We are in support of A.B. 276. This is a very important bill. We believe it codifies in the law what we currently do already. Our vice section is actively involved in helping victims of sex trafficking find the proper resources to get them out of that situation. Of those cases that Ms. Brown mentioned, 127 were from our agency. I did not pull the numbers for cases where we arrested and prosecuted pimps, but I can certainly get that information for you.

**Chairman Hansen:**

Frankly, if we are talking 202 cases, with the volume we are describing, it seems like we are not even putting a dent in the problem. Is LVMPD successful, or do you need more laws? Are we making any inroads into actually stopping or retarding the development of this practice?



**Chuck Callaway:**

Over the last few years, with the implementation of some of the new laws that Speaker Hambrick has pushed and laws such as this one before you today, I think it has given law enforcement more tools to address this situation. In regard to the pimps, it is difficult because, as was stated, often these young victims are very reluctant to testify against the pimp or reveal who he is. Many times, if the victim does not get the proper resources, she ends up back with the pimp again. It is a very frustrating situation, and every tool we can have to address it helps.

**Marissa Crook, President, Students to Abolish Sex Slavery, University of Nevada, Reno,:**

Our mission is to support local and state anti-trafficking efforts and I would like to testify in support of A.B. 276.

**Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:**

I am here in support of A.B. 276 and to thank Speaker Hambrick for bringing it forward for the victims of human trafficking throughout the state.

**Mike Dyer, Director, Nevada Catholic Conference:**

I would like to put on record the support of the Nevada Catholic bishops and the Catholic Church for this legislation.

**Joanna Jacobs, representing Dignity Health-St. Rose Dominican Hospitals:**

You have a letter of support from Katie Ryan with the Dignity Health Coalition ([Exhibit P](#)), and I would also like to say that we support this measure. This is a court issue for dignity and trying to help the victims as much as we can.

**Elisa P. Cafferata, President & CEO, Nevada Advocates for Planned Parenthood:**

We also have our testimony available ([Exhibit Q](#)). We have in past sessions and continue to support, particularly the coordination of services in healthcare and the reproductive healthcare needs of victims of all forms of trafficking, which of course is our interest. We are certainly willing to work with all of the state agencies to develop a plan to address the needs that these victims have. We hope to clarify the definition of a sexually oriented business where the notices are going to be required; it in some ways is quite broad. While we would certainly be happy to provide these notices in our health centers and are interested in helping these victims, I do not think we were intended to be in this list of sexually oriented businesses, and depending on how you read it, some of our education programs could make it so we fall into this category. Again, we are happy to provide the notices, we just think we may need to clarify who we want to include under that category.



**Grayson Wilt, representing Nevada State Medical Association:**

We have also provided written testimony in support of the bill ([Exhibit R](#)). Our physicians are happy to provide care and support whenever possible.

**Chairman Hansen:**

Is there anyone else who would like to testify in favor of A.B. 276? Seeing no one, I will open it up to opposition, is there anyone in opposition? Seeing no one, I will go to neutral.

**Bruce H. Breslow, Director, Department of Business & Industry:**

I am here because there are three similar bills, and each one has something very similar for the Department of Business & Industry: sending something out by first class mail to businesses. We support your efforts 100 percent, but I do not want to have this bill die because of a large fiscal note. I think \$400,000 for Business & Industry is a fiscal note that the bill does not need to have. My suggestion is that we work with NDOT and develop a sign that can be downloaded by businesses that are required to have one. We post it on our websites, the state website, any websites that are appropriate and let the businesses download them. The other thing I would suggest is that the Secretary of State has a portal, and the records of every business license in the state. One of the other bills says that this should be posted in every business in the state of Nevada. There are over 330,000 businesses in Nevada. Again, using the Secretary of State to send the message electronically through the portal saves all of that postage and all of the costs.

Business & Industry is a department that is cost-allocated. We do not have our own budget. We allocate our salaries to the thirteen agencies that work with us. We do not even have an area to put the money if you should give us this fiscal note to hire someone because we are on a cost allocation basis. I think you can avoid all of the costs that way.

Similarly, the question was asked, who is going to enforce this? While I would love to have enforcement powers, I do not have any in Business & Industry. I do not have any enforcement agents, and to go after civil penalties means I have to sue someone, which means I have to use the Attorney General. Perhaps there is an administrative fine that could be levied, rather than civil. I am not sure if it is the Bureau of Consumer Protection that would do that sort of thing. One of the other bills states that it would suspend the business license if it is not rectified in a certain period of time. The Secretary of State can do that electronically. I am trying to find a way to achieve your goals but save you all money in the process.

**Chairman Hansen:**

I am sure the Speaker would be happy to work with you on anything that can reduce fiscal costs.

**Assemblyman Thompson:**

This is something that we really need, so we need to work on whatever we can. I was doing a little research with some other states, and I would be willing to help in any way I can. There are many downloadable options for businesses to post the signs.

**Chairman Hansen:**

I will close the hearing on A.B. 276 and open the hearing on Assembly Bill 420.

**Assembly Bill 420: Enacts the Uniform Voidable Transactions Act.  
(BDR 10-1093)**

**Terry Care, Uniform Law Commissioner, Uniform Law Commission:**

All 50 states and the District of Columbia, the Virgin Islands, and Puerto Rico have uniform law commissioners. It is left to the states to decide how to designate uniform law commissioners. In Nevada, Mr. Ohrenschall, who sits on this Committee, is a uniform law commissioner. Senators Brower, Ford, and Segerblom are uniform law commissioners. Mr. Wilkinson, counsel for this Committee, is a uniform law commissioner, as are a few other folks in the Legislative Counsel Bureau. There are also a couple of law professors from the Boyd School of Law. We are a totally apolitical organization. We do everything we can to avoid controversy. We simply try to identify subjects that ought to be codified in as many states as possible, but states are free to reject our product if they wish to.

Assembly Bill 420 may look like it is all new law because the first ten pages are in bold, but that is not the case. If you look at the digest, it says this bill replaces the Uniform Fraudulent Transfer Act. The Uniform Voidable Transactions Act, which is this bill, makes various technical changes to the Uniform Fraudulent Transfer Act and includes a number of new provisions. The Uniform Fraudulent Transfer Act was promulgated by the Uniform Law Commission in 1984 and eventually it was adopted by 40 states, Puerto Rico, the Virgin Islands, and Washington D. C. Nevada adopted it in 1987. Virtually 95 percent of what is contained in A.B. 420 is existing law. If you look at page 15, you see there is a list of repealed sections. In essence, what this is intended to do is simply make some changes to bring an existing scheme up to date. It is not a substantive revision.

Every so often, the Commission looks at a uniform act and decides it is probably time to make some changes because technology changes and case law evolves. Some examples would be the Uniform Anatomical Gift Act, for which Nevada adopted a revised version in 2007, that covers human organ transplants and donations. Medical technology had changed over the years in that case. Uniform Unclaimed Property Act is another example. Assembly Bill 420 is another instance where the drafting committee said, We should probably take a look at this and bring it up to date. Currently, the Uniform Fraudulent Transfer Act is codified under *Nevada Revised Statutes* (NRS) Chapter 112. If you look at it and compare existing law with what is in A.B. 420, you will notice that there are very few changes. I should begin with why the change in the name of the uniform act. Under existing law, NRS Chapter 112, the words fraudulent and avoidance are used almost equally. Secondly, the committee realized that fraud is not necessarily an element to bring a cause of action under NRS Chapter 112. The better thinking was to call this voidable transactions as opposed to a fraudulent transfer. That is the reason for the name change.

The world we are talking about here is where you have an unsecured creditor who has a right to payment from a debtor. The debtor transfers or conveys the assets that he has. Sometimes debtors will do that to delay, hinder, or defraud the creditor. The debtor may have a best friend, or someone that he will convey assets to instead of allowing the creditor to take the assets. That is what is known as a voidable transaction under this act. Having given the Committee background, I will take a quick look at those sections mentioned in the bill.

Sections 4 through 20 go through definitions. There are some new definitions that we do not currently have under NRS Chapter 112. Those definitions are in section 10, which is electronic, and sections 13, 14, 16 and 18. All of those definitions are not substantive changes, they are just additions to clarify and bring the act up to date. All of those are definitions that the Uniform Law Commission has used in many of its other acts. Obviously, for example, section 10 definition of "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities. You would not have found a definition like that in 1984 when the Commission promulgated its original act. In section 16 "record" means information that is inscribed on a tangible medium, again you would not have found those words in 1984. So much commerce is transacted electronically, people can execute documents electronically. That is the reason for these changes, simply to add some clarification. Some other changes in section 21, subsection 2: we have added presumption—the language is "The presumption imposes on the party against whom the presumption is directed the burden of

proving that the nonexistence of insolvency is more probable than its existence." That simply means it is not left for the unsecured creditor to show that a debtor is insolvent, the debtor may have to do that himself. The reason is that the debtor is going to have his records, it may be that a debtor is claiming to be insolvent but is not because he continues to pay other creditors without paying the one creditor who thinks the assets are being fraudulently conveyed.

Section 23 says "debtor is voidable;" that is an example where we have deleted the word fraudulent and used the word voidable. We have done that throughout the entire bill. Subsection 3 of section 24 is new. There are burden of proof provisions throughout this bill. That is to clarify where the burden of proof lies in proving certain elements for a claim under this act. In this case it is the creditor. The language, preponderance of the evidence, the attorneys may recognize that is the standard of proof in a civil action.

Section 27 is another one with some new language. That is language that pertains to the transferee, which is the person who is receiving the assets that the unsecured creditor is of the opinion that he is being hindered or delayed from executing upon. If you look at section 27, subsection 2, paragraph (a), subparagraph (2), it discusses immediate or mediate transferee; these are basically defenses that a transferee may have. The transferee might be in a position to say, I took these assets in good faith and I paid fair value for them. That language was not there before, but after case law has evolved, the Commission felt there needed to be some clarifying language in the uniform act.

Section 29 is a brand new provision. That discusses choice of law. When I talk about choice of law, I am not talking about jurisdiction or choice of court. It may very well be that the court has jurisdiction over various parties in Nevada, but the transfer took place outside of Nevada, in Arizona, for example. If that is the case, then a Nevada court would say, We have jurisdiction over the parties, but as to whether the transfer is voidable, we will look to Arizona law to make that determination. This is something the Commission decided after decades of the law being in effect.

Section 30 is brand new. This deals with a series organization. Under NRS Chapter 86, which governs limited liability companies (LLC), there is a provision that approximately 12 states have that permits series organizations. The best way to explain the provision is to know the structure of a corporation and subsidiary corporations, and then determine that the LLC is somewhat similar, where you have a master LLC with series. For example, series A has certain assets and series B has certain assets. Therefore, series A is responsible for the obligations relating to the assets of series A. Traditionally, these are all

shielded from liability, one against the other. What section 30 is intended to do is to make it clear that this act would apply to transfers between series as well, that liability shield is not going to apply.

I have provided you with some information from the Uniform Law Commission ([Exhibit S](#)), ([Exhibit T](#)) and ([Exhibit U](#)). If anyone is interested, I also have a 60-page legal treatise that explains this much better than I have.

**Assemblyman Elliot T. Anderson:**

I am interested in receiving that treatise. Section 36, which is existing law, states that the burden of proof is clear and convincing. I am thinking there is a conflict between section 23, subsection 3, and the other section that deals with the preponderance of the evidence. Also, you mentioned unsecured creditors, but would this also apply to real property, which I assume would be a secured creditor? Talking about the nature of voidable transactions is generally different than void transactions. Maybe this is just as confusing as using the word fraud. If it is voidable, there are two innocent parties; you have the creditor and the non-innocent party who may have lied or had some bad intent, then you have the transferee, or the good faith purchaser. Generally with voidable transactions, you have to apportion the risk between the two innocent parties. It goes against the first innocent party, the creditor, who had the best chance to avoid that situation. I do not think that is applicable to this act, but I wanted to clarify why the word voidable was used instead of the word fraud. As you know voidable transactions have a well-versed history.

**Terry Care:**

Section 36 applies to spendthrift trusts. Now that you have raised the issue, I have had communications with Senator Lipparelli. Senator Lipparelli has a bill that delves into the issue of section 36 and whether the voidable transaction act should apply to a spendthrift trust. I never got into estate planning myself, but a spendthrift trust is basically an irrevocable trust where the trustee creates the trust, the assets are for the benefit of the beneficiary who has no decision-making powers over what happens with those assets. Currently, in Nevada, a transfer of assets into a spendthrift trust is not subject to the Fraudulent Transfer Act unless you can demonstrate fraud by clear and convincing evidence. That is a heightened standard of proof. When this provision was enacted the language in section 36 was used, which is current law and probably came from the Uniform Law Commission. There is a good chance that issue will come before this same Committee by virtue of another bill. It has nothing to do with the revisions to the Uniform Act that come under A.B. 240.

You are also correct as to real property. Sometimes you see the term conveyance when you are talking about real property transfer and tangible assets, but this act would obviously include transfers of real property. As to void and voidable, we are talking about transactions that have already occurred. I said earlier that the word avoidance appears equally in the current act as the word fraudulent in the previous act. A good example would be if you were to look at NRS 112.210, avoidance of a transfer or obligation. In section 23, we have simply deleted the word fraudulent and done that throughout. Fraud is not necessarily an element for a cause of action under voidable transfer schemes. That is the rationale that was given by the drafting committee.

**Assemblyman Elliot T. Anderson:**

I know fraud confused a lot of courts in my initial research on this, because of the well-versed meaning of fraud. It is good to have on the record that voidable does not really have any term of import in this act. That is my understanding of the intent of the word voidable. It is just trying to stop the confusion of fraud, not change it to something else.

**Assemblyman Nelson:**

I applaud you and the Uniform Law Commission. I have actually handled hundreds of bankruptcy cases and dealt with this law a number of times. I think this is probably the closest to a slam dunk bill I have seen all session. Part of this is to get us in compliance with the vast majority of other states, particularly with the choice of law provisions, is that correct?

**Terry Care:**

That is correct. I know this is your first session, and you will learn that there is no such thing as a slam dunk bill. I can tell you that the amendments were adopted by us in 2014 when we met in Seattle. It has already been enacted in Kentucky, and introductions so far this year are in California, Colorado, Georgia, Idaho, Indiana, Massachusetts, Minnesota, New Mexico, North Carolina, North Dakota, and there may be others. This is one of those uniform acts that since it is already in forty jurisdictions, you are likely going to get that many that will adopt this act as well.

**Assemblyman Nelson:**

I would also like a copy of the treatise. I have had to explain to many people that fraudulent does not really mean fraudulent in the prior act, even though you may not have committed fraud and may not have intended to violate the act, if you have made a transfer when you were insolvent, it could implicate the provisions of the act. I would like to thank you for your efforts.

**Assemblyman Jones:**

My question is when it comes to jurisdictions and different states, we have uniform laws, if something happens in a state that has not enacted the uniform law and you are trying to collect from a state that has enacted the law, will it be treated differently?

**Terry Care:**

We are talking about a Nevada court. If you had an action brought by subject matter jurisdiction or diversity, it does not matter, but the parties and the subject matter are properly undergoing adjudication in a Nevada court. It just so happens that the transfer was made in another state. The transfer may have been made in one of the ten states that did not adopt the uniform act, in that case the Nevada court would still have to apply whatever the law is in that other state to Nevada. That is choice of laws as opposed to jurisdiction.

**Assemblyman Jones:**

If the asset went to New Mexico and they did or did not enact this, how does the Nevada court get that asset?

**Terry Care:**

Let us say that the transfer occurred in New Mexico, but the Nevada court has jurisdiction. There is a judgment on behalf of the creditor against the transferee who is in New Mexico. Then it becomes a case of full faith and credit and seeking to have what New Mexico would consider a foreign judgment enforced in the state of New Mexico. There is actually a uniform act that deals with enforcement of foreign judgments. There would be a provision under New Mexico law to enforce a Nevada judgment.

**Chairman Hansen:**

Over the last three sessions, we have had a series of Uniform Law Commission laws, and they are obviously extremely well thought out and a lot of time and effort have been put into this to the great benefit of the entire United States, including Nevada. I do want to sincerely thank you for all of your efforts on our behalf. How many years have you been doing this?

**Terry Care:**

I have been a uniform law commissioner since 1999. I have testified on 51 different uniform acts in Nevada.



**Assemblywoman Diaz:**

Does this act, in your opinion, have balance, or do you think there may be a favor to the creditors and big business against debtors or unsophisticated parties? I want to ensure that the playing field is level.

**Terry Care:**

We have no interest in creditors over debtors; we are simply trying to improve on a product that we first promulgated more than 30 years ago. As to leveling the playing field, the inclusions of the new burden of proof provisions and the evidentiary provisions certainly clarifies what the courts in the past may have been struggling to determine where the burden lies. It is not that we are pro-creditor or pro-debtor, we do not have an agenda, just trying to improve existing law.

**Assemblyman Elliot T. Anderson:**

I would like to talk about when intent can be presumed. Are there provisions where the debtors' intent can be presumed? For instance, the debtor is insolvent, his debts are more than his assets and then he transfers something at an unreasonable value. Under the provisions of the bill, is that intent presumed? And if it is presumed, is it a rebuttable presumption?

**Terry Care:**

Section 21 of the bill addresses your question. It reads, "A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets." That is a presumption. Subsection 2 states, "The presumption imposes on the party against whom the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence." While there is a presumption of insolvency, if you are not paying your debts, there can also be imposed upon you a burden to demonstrate that you are insolvent.

**Assemblyman Elliot T. Anderson:**

Once a debtor is insolvent, if he transfers at an unreasonable commercial value, would that trigger liability under this act?

**Terry Care:**

That fundamentally is the concept behind voidable transactions. Section 23 pretty much spells out how that works.

**Assemblyman Elliot T. Anderson:**

I just want to make sure I am understanding this. Am I correct?

**Terry Care:**

Yes you are.

**Chairman Hansen:**

Any further questions? Is there anyone who would like to testify in favor of this bill? Anyone in opposition or neutral? Seeing no one, I will close this hearing and open up for public comment. I see no one, and this meeting is adjourned [at 10:41 a.m.].

RESPECTFULLY SUBMITTED:

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Nancy Davis  
Committee Secretary

APPROVED BY:

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Assemblyman Ira Hansen, Chairman

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

<b><u>EXHIBITS</u></b>			
<b>Committee Name:</b> <u>Committee on Judiciary</u>			
<b>Date:</b> <u>March 27, 2015</u>		<b>Time of Meeting:</b> <u>8 a.m.</u>	
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 267	C	James Dold, Campaign for the Fair Sentencing of Youth	Written Testimony
A.B. 267	D	James Dold	UN Report on Life Sentences for Youths
A.B. 267	E	Bridget Walsh, Private Citizen	Written Testimony
A.B. 267	F	Kristina Wildeveld, Nevada Association of Criminal Justice	Written Testimony
A.B. 267	G	Tim O'Callaghan, Roman Catholic Diocese of Las Vegas	Written Testimony
A.B. 267	H	Megan Hoffman, Private Citizen	Written Testimony
A.B. 267	I	Esther Rodriguez Brown, The Embracing Project	Written Testimony
A.B. 267	J	Jon D. Ponder, HOPE for Prisoners	Written Letter of Support
A.B. 267	K	Steve Yeager, Deputy Public Defender, Office of the Clark County Public Defenders'	Written Letter of Support
A.B. 267	L	Vanessa Spinazola, American Civil Liberties Union of Nevada	Written Letter of Support
A.B. 267	M	Mary Berkheiser, UNLV	Written Letter of Support
A.B. 267	N	Regan Comis, M&R Strategic Services	Written Letter of Support
A.B. 267	O	Amy Coffee, Nevada Attorneys for Criminal Justice	Written Letter of Support
A.B. 276	P	Katie Ryan, Dignity Health	Written Letter of Support

A.B. 276	Q	Elisa Cafferata, Planned Parenthood	Written Letter of Support
A.B. 276	R	Stacy Woodbury, Nevada State Medical Association	Written Letter of Support
A.B. 420	S	Terry Care, Uniform Law Commissioner	2014 Amendments to the Uniform Fraudulent Transfer Act
A.B. 420	T	Terry Care	Legislative Fact Sheet
A.B. 420	U	Terry Care	2014 Amendments to the Uniform Voidable Transactions Act

EXHIBIT B

EXHIBIT B

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session  
May 11, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 3:37 p.m. on Monday, May 11, 2015, in Room 2134 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 Greg Brower, Chair  
Senator Becky Harris, Vice Chair  
Senator Michael Roberson  
Senator Scott Hammond  
Senator Ruben J. Kihuen  
Senator Aaron D. Ford

**COMMITTEE MEMBERS ABSENT:**

Senator Tick Segerblom (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Elliot T. Anderson, Assembly District No. 15  
Assemblyman John Hambrick, Assembly District No. 2  
Assemblyman Michael C. Sprinkle, Assembly District No. 30

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Nick Anthony, Counsel  
Cassandra Grieve, Committee Secretary

**OTHERS PRESENT:**

Kerrie Kramer, The Cupcake Girls

Senate Committee on Judiciary  
May 11, 2015  
Page 2

John Wagner, Independent American Party  
John T. Jones, Jr., Nevada District Attorneys Association  
Sean B. Sullivan, Office of the Public Defender, Washoe County  
Steve Yeager, Office of the Public Defender, Clark County  
Jennifer Lazovich, Focus Property Group; Olympia Companies  
Angela Rock, Olympia Companies  
Garrett Gordon, Community Associations Institute  
Pamela Scott, The Howard Hughes Corporation  
Jonathan Friedrich, Nevada Homeowner Alliance  
Robert Frank, Citizen Task Force for Voter Rights  
James Dold, The Campaign for the Fair Sentencing of Youth  
Xavier McElrath-Bey, The Campaign for the Fair Sentencing of Youth  
Kristina Wildeveld  
Megan Hoffman  
Vanessa Spinazola, American Civil Liberties Union of Nevada  
Regan Comis, M + R Strategic Services  
Jim Zeitler  
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General  
Parker Stremmel, Dignity Health St. Rose Dominican Hospitals  
Marlene Lockard, Nevada Women's Lobby  
Eric Spratley, Sheriff's Office, Washoe County  
A.J. Delap, Las Vegas Metropolitan Police Department  
Bob Roshak, Nevada Sheriffs' and Chiefs' Association

**Chair Brower:**

I will open the work session on Assembly Bill (A.B.) 50.

**ASSEMBLY BILL 50 (1st Reprint)**: Revises provisions concerning the solicitation of contributions. (BDR 7-447)

**Patrick Guinan (Policy Analyst):**

Assembly Bill 50, as sponsored by the Office of the Secretary of State, was heard by this Committee on April 30. I will read from the work session document (Exhibit C).

Several parties, in consultation with the Secretary of State's Office, have vetted Proposed Amendment 6951.



**Chair Brower:**

The proposed amendment intends to clean up some provisions and ensure the bill does not adversely affect Nevada's charitable organizations.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 50.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

**Chair Brower:**

I will open the work session on A.B. 67.

**ASSEMBLY BILL 67 (1st Reprint):** Makes various changes relating to driving, operating or being in actual physical control of a vehicle or vessel while under the influence of alcohol or a controlled substance or engaging in other prohibited conduct. (BDR 4-151)

**Mr. Guinan:**

Assembly Bill 67, as sponsored by the Office of the Attorney General, was heard by this Committee on May 4. I will read from the work session document ([Exhibit D](#)).

Brett Kandt of the Attorney General's Office provides the proposed amendment.

**Chair Brower:**

The proposed amendment defines physical control for the purpose of a DUI charge. The sponsor of the Assembly Floor amendment supports Mr. Kandt's proposed amendment.

**Senator Ford:**

What about when a person is in a car, asleep in the driver's seat, with the heating or air conditioning on?

**Chair Brower:**

If a person is in the driver's seat, he or she may be deemed to be in physical control. In order to not be in physical control, the person cannot be in the driver's seat, the engine cannot be running and so on.

SENATOR HAMMOND MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 67.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on A.B. 225.

**ASSEMBLY BILL 225 (1st Reprint)**: Revises provisions governing programs for reentry of offenders and parolees into the community. (BDR 16-45)

**Mr. Guinan:**

Assembly Bill 225, as sponsored by Assemblywoman Dina Neal, was heard by this Committee on May 8. I will read from the work session document ([Exhibit E](#)).

There is an amendment proposed by Assemblywoman Neal.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 225.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on A.B. 47, A.B. 183, A.B. 195 and A.B. 212.

**ASSEMBLY BILL 47 (1st Reprint)**: Provides for the establishment within the Central Repository for Nevada Records of Criminal History of a service to conduct a name-based search of records of criminal history. (BDR 14-294)

**ASSEMBLY BILL 183 (1st Reprint)**: Revises provisions related to real property. (BDR 10-621)

**ASSEMBLY BILL 195 (2nd Reprint)**: Revises provisions governing deficiency judgments. (BDR 3-865)

**ASSEMBLY BILL 212 (1st Reprint)**: Increases the statute of limitations for sexual assault. (BDR 14-1062)

**Mr. Guinan:**

I have work session documents for A.B. 47 (Exhibit F), A.B. 183 (Exhibit G), A.B. 195 (Exhibit H) and A.B. 212 (Exhibit I) summarizing the bills. The hearings for these bills did not have opposition; none of the bills have amendments.

SENATOR HARRIS MOVED TO DO PASS A.B. 47, A.B. 183, A.B. 195 AND A.B. 212.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

**Chair Brower:**

I will open the work session on A.B. 193.

**ASSEMBLY BILL 193 (1st Reprint)**: Makes various changes relating to criminal procedure. (BDR 14-911)

**Mr. Guinan:**

Assembly Bill 193, as sponsored by the Assembly Committee on Judiciary, was heard by this Committee on May 6. I will read from the work session document (Exhibit J).

SENATOR HARRIS MOVED TO DO PASS A.B. 193.

SENATOR HAMMOND SECONDED THE MOTION.

**Senator Ford:**

I have been in discussion with the proponents of A.B. 193, attempting to craft an amendment that allays my concerns about ensuring the credibility of the hearsay being offered and admitted. Absent those types of protections, I cannot support this bill in its current form.

THE MOTION CARRIED. (SENATORS FORD AND KIHUEN VOTED NO.)

\* \* \* \* \*

**Chair Brower:**

We will open the hearing on A.B. 108.

**ASSEMBLY BILL 108 (1st Reprint)**: Revises provisions governing victims of sex trafficking. (BDR 14-750)

**Assemblyman Elliot T. Anderson (Assembly District No. 15):**

Assembly Bill 108 is another step toward helping victims of sex trafficking-related crimes. It is another step toward helping victims live healthy and productive lives.

In 2011, Assemblyman John Hambrick sponsored A.B. No. 6 of the 76th Session, which allowed courts to grant motions to vacate judgments if a defendant's conviction of engaging in or soliciting prostitution was the result of having been the victim of sex trafficking or involuntary servitude.

Such victims often end up with criminal records that affect their future prospects, including employment opportunities. Assembly Bill No. 6 of the 76th Session provided victims of trafficking a chance at new beginnings.

Assembly Bill 108 builds on Assemblyman Hambrick's earlier legislation by allowing a court to grant a motion to vacate a judgment if the defendant was convicted of trespassing, loitering in a gaming area or violating a county, city or town ordinance prohibiting loitering for the purpose of solicitation or prostitution. This motion will only be granted if the defendant's participation in

the offense was the result of having been a victim of sex trafficking or involuntary servitude.

Many convictions are a result of plea bargain arrangements in which defendants plead guilty to crimes of a lesser penalty to avoid the risk of going to trial and receiving harsher sentences. There are many cases where a victim of sex trafficking or involuntary servitude agrees to accept a trespassing or loitering conviction instead of risking conviction for a more serious crime.

Often, casino staff who are suspicious of prostitution in the area will place suspects under citizen's arrest, charging them with trespassing rather than trying to prove a case for soliciting, which can be protracted. While A.B. 108 may be a small change to statute, it will have a large impact on some of the most vulnerable members of our society.

**Chair Brower:**

In an effort to undo a prior conviction, how will one prove he or she was a victim of trafficking or involuntary servitude?

**Assemblyman Anderson:**

Victims of sex trafficking will need to apply to the court and, similar to other types of cases, prove they have been in that situation. It is under the discretion of the court to accept the proof. Assembly Bill 108 does not create a new procedure; it builds upon existing law.

**Chair Brower:**

Will the person—who has already been convicted of the crimes at this point—simply file a motion or affidavit attesting to the fact that the prior convictions fit into one of the two categories in section 1, subsection 5, paragraph (b)?

**Assemblyman Anderson:**

Correct. Evidence needs to be presented to the court. As for what kind of evidence is required, I cannot say, but there would have to be some showing that the person is a victim of sex trafficking.

**Kerrie Kramer (The Cupcake Girls):**

The Cupcake Girls is a nonprofit organization geared solely toward the support and rehabilitation of individuals in all facets of the adult entertainment and sex

industry. The organization respectfully and discreetly provides individuals with resources and support tailored to fit the needs of the individual by building personal relationships. These individuals include those who have been victims of sex trafficking.

The Cupcake Girls was founded by Joy Hoover and facilitates connections between community resources and individuals working in the industry. We have provided 1,076 meetings for peer support; 142 professional sessions with doctors, dentists and lawyers; 83 instances of mental health assistance; and 55 resume-building and career-development sessions. These activities are accomplished through donations and with trained volunteers and community partners.

We support A.B. 108 because our major focus is helping victims of trafficking become whole again. The most important aspect of becoming whole again is gaining employment. The biggest employment barrier faced by these individuals is the multiple trespassing convictions that must be divulged in the application process.

Often defendants plead down from prostitution and solicitation to lesser charges. Despite this, when an employer sees the multiple trespassing convictions, it usually leads to the conclusion of prostitution or solicitation. That situation makes gainful employment outside the industry very difficult.

Assembly Bill 108 will give all victims of sex trafficking the ability to get out from under the life of convictions they so desperately want to leave behind.

**John Wagner (Independent American Party):**

We support A.B. 108. These individuals have already been victims once. If we can clear this issue up, they can get on with their lives. This is a good step forward.

**John T. Jones, Jr. (Nevada District Attorneys Association):**

We support A.B. 108.

**Chair Brower:**

I am not sure a person seeking to take advantage of this law is called a defendant when he or she makes a motion under section 1, subsection 5, paragraph (c). What would be the process procedurally?

**Mr. Jones:**

*Nevada Revised Statute* (NRS) 176.515 is a relatively new statute, so I consulted with my office on how many of these type motions had been filed. I was informed not many had been filed, although those filed were from defendants asking judges to set aside their convictions because they were victims of sex trafficking.

**Chair Brower:**

Was the motion made to set aside the conviction or the judgment within the same case in which the person was convicted?

**Mr. Jones:**

Yes. It is not a new case to file that motion. The motion is filed within the original case. Therefore, if there are multiple convictions—which is often the situation—there is one motion within each case.

**Chair Brower:**

What if a person has a string of convictions? A person has escaped the industry and wants a different job, but does not want his or her criminal history available to prospective employers. This person wants to have his or her prior judgment or judgments vacated. Is this person a defendant or a petitioner? How does A.B. 108 handle this situation?

**Mr. Jones:**

If individuals have prior criminal cases, they are defendants. Once their cases are closed, they are still defendants from those cases.

**Chair Brower:**

I am not sure they are still called defendants at that point. For lack of a better term, they are convicts. They are no longer defending a case; they are convicted misdemeanor felons.

**Mr. Jones:**

Correct.

**Assemblyman Anderson:**

Section 1, subsection 1 contemplates granting a new trial and vacating the judgment after the trial. It is written broadly enough where a motion could be filed after a judgment has been entered.



**Chair Brower:**

The intent of A.B. 108 is understandable. The Committee wants to make sure it can process this bill. I need to look at the language more closely and speak with Legislative Counsel.

**Sean B. Sullivan (Office of the Public Defender, Washoe County):**

We support A.B. 108. We want to encourage our clients to get a fresh start. We are happy to help clarify the bill's language.

**Steve Yeager (Office of the Public Defender, Clark County):**

We support A.B. 108. We are also willing to help clarify language in the bill.

**Chair Brower:**

Mr. Sullivan, how do you see this process working from the public defender's point of view? I understand the process is already in statute and A.B. 108 merely adds new offenses. Could the bill apply to a defendant in a pending criminal case? Could it also apply to someone with past cases and a record?

**Mr. Sullivan:**

It could encompass both scenarios.

**Chair Brower:**

We will close the hearing on A.B. 108 and open the hearing on A.B. 192.

**ASSEMBLY BILL 192 (1st Reprint):** Makes various changes relating to common-interest communities. (BDR 10-661)

**Jennifer Lazovich (Focus Property Group; Olympia Companies):**

I represent companies that are developers of large master planned communities in southern Nevada. Those master planned communities are Southern Highlands, Mountain's Edge and Sky Canyon.

Assembly Bill 192, section 1, subsection 1, paragraphs (a) and (b), allows communities with 1,000 units or more to have a declarant remain on the association board by appointing a majority of the members until 90 percent of units are sold. Assembly Bill 192 also brings a homeowner onto the board sooner, at 15 percent of units sold.

Southern Highlands has an annual operating budget of about \$8 million. The declarant has appointed a member with a background in accounting, a member with a background in urban planning and a construction manager. The express purpose of appointing members with specific expertise is to guide the final development and completion of the community as set forth in the development agreement. About \$35 million worth of improvements are still to be completed within the Southern Highlands project.

In Mountain's Edge, the developers and Clark County have a development agreement where substantial improvements are awaiting development, including parks, fire stations and a police substation.

Development agreements for these large master planned communities call for enormous amounts of infrastructure to be put in before the community is considered complete. That consideration of completeness comes with the construction of homes, too, which is why we ask for this change to NRS 116.

Allowing the declarant, or developer in this case, to remain on the board until 90 percent of the units are completed also allows for the additional time to finish many of the requirements found in the development agreements. Those agreements address underground utilities, parks, trails, etc.

Having the developer, or declarant, to stay on the board until 90 percent of completion allows for a smoother transition to a homeowner board. If the developer stays on longer, it is important to bring homeowners onto the board sooner. In the cases of large master planned communities, the bill balances this change by lowering the percentage at which homeowners can be on the board from 25 percent to 15 percent.

**Angela Rock (Olympia Companies):**

We support A.B. 192 because it more closely follows and is consistent with the Uniform Common Interest Ownership Act, upon which NRS 116 was adopted and originally modeled.

Assembly Bill 192 recognizes the difference between large, complex master planned communities and smaller homeowners' associations. The bill allows transition at a number better reflecting the completeness of a master planned community.

In a large, complex master planned community, if 25 percent of the homes remain to be built, that community is still considered under construction. Southern Highlands is a community still under construction because it has \$35 million worth of infrastructure outstanding. In comparison, a smaller community is essentially complete if it has a small number of homes left to be built.

**Garrett Gordon (Community Associations Institute):**

Community Associations Institute consists of homeowners' association professionals, homeowners' board members and homeowners. We support A.B. 192.

It is good the bill only applies to communities with over 1,000 units. These larger associations are well managed, employ professionals and have minimal complaints.

The makeup of the board is a balancing act. With A.B. 192, the developer stays on the board longer, but the homeowner can get on the board earlier. Making this change allows the homeowner on the board earlier to provide input.

**Pamela Scott (The Howard Hughes Corporation):**

We support A.B. 192.

**Senator Ford:**

Ms. Lazovich, what has prompted a need for this legislation?

**Ms. Lazovich:**

Assembly Bill 192 does not correct a problem but is proactive legislation.

For example, in Southern Highlands, approximately 65 percent of the units have been sold. Although reaching the 75 percent threshold remains some distance away, we believe the community will still be under construction even at 75 percent complete. At 75 percent complete, the community will still have a substantial dollar amount at stake in terms of improvements yet to be completed.

**Senator Ford:**

What is your concern by leaving the law as is? Do you think you will be unable to continue to develop the community? I am not sure there is a need to change the law.

**Ms. Lazovich:**

Southern Highlands has put a strong emphasis on detail in the exterior landscaping not only in the parks but also in the trails. This has been done with great intent. The developers want people to know when they have entered the Southern Highlands planned community.

A fear could be that if we transitioned off at 75 percent—believing the community to still be under construction at 75 percent—a board controlled by homeowners may decide the landscaping is not in the best interest of the community and tear it out.

Assembly Bill 192 is a way to continue the consistency started when the community development began. As we look forward to keeping that consistency in place, things could change if the developer does not remain on the board.

**Senator Ford:**

It is more appropriate to have homeowners take control of the homeowners' association sooner rather than later. I understand the 15 percent and the offer of homeowners coming onto the board earlier. My question remains: why is it inappropriate for homeowners to change something the developer wants? Why is it not acceptable for homeowners to decide to stop a particular renovation or construction? Why should homeowners' input be lessened by waiting for the community to reach 90 percent ownership?

**Ms. Rock:**

Homeowner involvement is not lessened with this bill. The way NRS 116 is written, at every board meeting, homeowners can address concerns before the meeting on agenda items and at the end of the meeting during open comment. If homeowners have a true concern, the Real Estate Division, under the Department of Business and Industry, has numerous programs available to address their issues.

It is generally understood that when a community is still under construction, the developer maintains financial responsibility. Public offering statements are still

being generated which have a litany of markers that have to be met with financial reporting, financial statements and financial viability of the community.

When a developer is still selling to meet that next marker of 2,500 homes and still producing public offering statements, it is fair for the developer to maintain an element of responsibility because it does indeed have a responsibility. The developer is responsible for the financial health of the community. The developer must continue to have authority on the board because the community is still under construction.

**Jonathan Friedrich (Nevada Homeowner Alliance):**

Nevada law clearly states when 75 percent of the community is built out and sold, the community transitions to a homeowners' association.

At the time of transition, the developer is no longer in charge of the management of the community unless the new homeowners' association chooses to hire the developer back. Developers and homeowners' association industry professionals know this is the law. With these communities nearing completion, now the developers want the law changed.

Southern Highlands is close to being 75 percent built out. Southern Highlands holds a profitable management contract with the community in addition to being a developer in the Las Vegas area.

When a developer turns the community over to the homeowners' association, amenities such as parks and clubhouses must be completed and reserve funds must be in the bank and turned over to the new homeowners' board. The transition process is a costly step.

In the case of Southern Highlands, it seems like the developer is not willing to give up its contract and turn over control to the community. The developer is asking to rewrite the rulebook in the middle of the game.

Infrastructure can be completed in the early stages of the development. By increasing the percentage of community completion from 75 percent to 90 percent, a developer can hang on to a community for years and possibly forever. Developers tried to change this law in the last Session. The Real Estate Division opposed the bill, and it failed.

This action is nothing short of pure greed at the expense of homeowners. Homeowners were promised one thing in the offering statement, and this bill will change that offering.

**Chair Brower:**

How do you see this bill adversely affecting homeowners?

**Mr. Friedrich:**

It is bait and switch. The homeowner was promised one thing, and now this bill delivers something else.

**Chair Brower:**

To the homeowner's detriment?

**Mr. Friedrich:**

Possibly. Southern Highlands is not turning over all the promised amenities. With A.B. 192, developers can stretch out those promised amenities for more years.

**Chair Brower:**

What practical negative impact will that have on a homeowner?

**Mr. Friedrich:**

There will be no bidding on the management contract. If A.B. 238 goes forward, bids will be required, so the contract for the management of the community might be cheaper with an outside contractor versus the Southern Highlands developer.

**ASSEMBLY BILL 238 (2nd Reprint):** Makes various changes to provisions relating to a homeowners' association. (BDR 10-808)

**Robert Frank (Citizen Task Force for Voter Rights):**

There is nothing broken, so nothing needs to be fixed. For all this time, 75 percent has worked well for over 3,000 homeowners' associations. The law is fair to homeowners now.

As a member of the Commission for Common-Interest Communities and Condominium Hotels, I often see rules and regulations proposed where the association or the homeowner is not harmed, but the rule is of no benefit to the

community either. Often, developers benefit greatly and communities do not. Assembly Bill 192 seems self-serving for one particular developer.

The bill greatly benefits a developer that subcontracts work to its own company or to companies in which it has a vested interest. The bill is a benefit to developers because they do not have to have reserve funds at the ready, nor do they need to finish the amenities they promised by the 75 percent mark.

**Chair Brower:**

We will close the hearing on A.B. 192 and open the hearing on A.B. 267.

**ASSEMBLY BILL 267 (1st Reprint):** Revises provisions concerning the sentencing and parole of persons convicted as an adult for a crime committed when the person was less than 18 years of age. (BDR 14-641)

**Assemblyman John Hambrick (Assembly District No. 2):**

Every day, minors are charged with serious crimes. After minors are charged, they may wait for a trial date for perhaps a year or 2 years. In that time, the defendant may progress from a minor into adult. This causes problems with regard to sentencing. Assembly Bill 267 addresses this issue.

**James Dold (the Campaign for the Fair Sentencing of Youth):**

The Campaign for the Fair Sentencing of Youth is a coalition of individuals who come together to work for more fair and age-appropriate sentencing standards for youths convicted of serious crimes.

Section 1 of A.B. 267 states the requirements judges must consider when sentencing juveniles in an adult court, including the diminished culpability of juveniles relative to adults. This language comes directly from the U.S. Supreme Court case *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

Section 2 prohibits the imposition of a life without parole sentence on a person who was under the age of 18 when he or she committed the offense.

Section 3 deals with the parole eligibility of those individuals, setting parole eligibility at 15 years for a nonhomicide offense and 20 years for a homicide offense when there was only one victim.



Section 5 makes these provisions retroactive so they are applicable to individuals currently serving sentences of life without parole if the specifics of this legislation are met.

Assembly Bill 267 is not a “get out of jail free card.” It is important to note that judges retain the ability to impose life sentences for both homicide and nonhomicide offenses.

This bill gives the State Board of Parole Commissioners an ability to review cases to see if these youths have been rehabilitated—if they have changed—in the meaning and the spirit of several recent U.S. Supreme Court cases.

We have worked with the Nevada District Attorneys Association and the Parole Board to ensure an appropriate balance in maintaining public safety and recognizing we are dealing with juveniles. No child should be sentenced to die in prison.

Back in the 1990s, there was a juvenile crime wave. Criminologists from across the Country theorized this juvenile crime wave was going to continue. This opinion resulted in the superpredator theory, which held that a new generation of juvenile delinquents was more violent and remorseless than ever before. These juveniles were characterized as being jobless, fatherless and Godless.

The superpredator theory led to a host of states passing laws to make it easier to transfer juveniles into the adult criminal justice system and place adult penalties on juveniles, including extreme sentences like the death penalty and life without parole sentences.

In 2005, the U.S. Supreme Court weighed in on extreme sentences being applied to minors. The case of *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005), struck down the death penalty for juveniles. In an opinion by Justice Anthony Kennedy, the Court noted that behavioral development science shows the juvenile brain has fundamental differences between it and an adult brain. Science shows that the part of the brain in charge of decision making, the prefrontal cortex, is not fully developed in juveniles and, as a result, children rely on the amygdala when thinking, making them more impetuous and more susceptible to peer pressure and making rash decisions.

The Court also held that the international consensus is against imposing the death penalty on juveniles. Justice Kennedy noted only a handful of nations sentence children to death: Iraq, Somalia, Saudi Arabia—and the United States.

The final item Justice Kennedy wrote about was the great difficulty in distinguishing between the irredeemable youths who might not be rehabilitated over time and the overwhelming majority of children who could be rehabilitated over time. Justice Kennedy cited these crime statistics: a 50 percent decline in criminal activity by the time a youth reaches 22, and an 85 percent decline in criminal activity by the time a youth reaches the age of 28. We call this trend “aging out of criminal behavior.” This rationale applies across the board to juveniles convicted of committing serious offenses.

In *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010), the Court took up the issue of life without parole sentences for nonhomicide offenses. Here the Court again relied on the already established reasoning from *Roper v. Simmons* which struck down life without parole sentences for nonhomicide offenses. Here again Justice Kennedy highlighted that life without parole sentences are akin to the death penalty for children because children are sent to cells where they will never have the opportunity to leave prison no matter how much they change or how much they are rehabilitated.

In looking at the rehabilitation models of juveniles who commit serious crimes and the fact that so many children change over time, it is difficult to distinguish between juvenile offenders who cannot be rehabilitated and those who committed the crime as a part of transient youth.

In the 2012 *Miller v. Alabama*, the Court takes on the issue of mandatory life without parole sentences. In this case, the Court strikes down mandatory life without parole sentences for juveniles convicted of homicide offenses, invalidating 28 statutes across the Country. The decision requires judges to consider certain mitigating factors of youth, including the diminished culpability of juveniles relative to adults, any time a child faces a potential life sentence. This is stated in section 1 of A.B. 267.

Since the *Miller v. Alabama* decision, several states have ruled the Court’s decision should be applied retroactively. Of the 14 state supreme courts that have taken this issue up, 10 states have held the law should be applied

retroactively. Two states have upheld discretionary life without parole sentences.

In response to the U.S. Supreme Court cases and the emerging juvenile brain behavioral developmental science, several states have been proactive in removing the possibility of sentencing a child to life without parole. These states include: Texas, Wyoming, Montana, West Virginia, Kansas, Kentucky, Massachusetts, Hawaii, Vermont and Delaware. I mention these states specifically to show the breadth of political and geographical diversity of the states that have enacted these reforms. The reforms in these states have been on a bipartisan basis, looking at the issue through the lens of human rights. The U.S. is the only country in the world known to still use the sentence of life without parole on children in violation of several international treaties.

The American Bar Association has been proactive in this regard by passing Resolution 107C in February. Resolution 107C calls on all states and the federal government to eliminate life without parole as a sentencing option for children, holding that children should have a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

Our organization has seen great bipartisan support for this issue. We have worked with former Speaker of the House Newt Gingrich and former President Jimmy Carter on this issue.

**Xavier McElrath-Bey (The Campaign for the Fair Sentencing of Youth):**

I am the cofounder of the Incarcerated Children's Advocacy Network which is sponsored by the Campaign for the Fair Sentencing of Youth. I coordinate a national network of formerly incarcerated individuals who were convicted of murder as children. This work is important to me because when I was 13 years old, I was arrested, charged and convicted to serve a 25-year sentence in prison for my involvement in a first-degree murder.

When convicted, I weighed about 112 pounds and was 5 feet 2 inches tall. I was very much still a child, but the only thing the court had was a rap sheet showing I had a record of 19 arrests and 17 convictions. I was viewed by the juvenile court as incorrigible, someone beyond repair and irredeemable.

My probation officer fought hard to have me transferred into the adult court system. When I entered the adult court system, something strange happened. I

met a public defender who looked at who I was on the inside. She asked me questions that were not typical of my previous experiences with public defenders. She recognized I was still a child. She understood I came from a background of extreme circumstances—of abuse and neglect. She saw I had grown up in foster care and group homes and that I had been a gunshot victim at 11 years old. She understood I had seen much violence in my community.

Prior to that point, adults I met did not look into my life and what I experienced growing up but looked at my behavior with the result being punitive. My public defender convinced the court I was still a child; and with A.B. 267, we want to convince the Committee these juveniles are still children.

When my public defender convinced the judge I was a child, instead of giving me a 60-year sentence as recommended by the state, the judge gave me a 25-year sentence; I could be free in my mid-twenties. In some way, these people believed I had a potential for change—and I did. During my incarceration, I grew up. I matured. I became remorseful and thoughtful of the future and developed the hope that someday I might live a normal life.

Today, I live my life as an eternal apology to the victim and his family, to those in my community I harmed and to those who never envisioned I might become a better person. Because of the grace of God, support from people in my life and the opportunities given to me, I was released and given the chance to demonstrate I was better than my worst act. We want to see these individuals have the same opportunity.

I want the Committee to allow juveniles the same opportunity I had to someday be released, live normal lives and prove they are better than their worst acts. While incarcerated, I earned an associate in arts degree in social work and education, and a bachelor of arts degree in social science. In the past 13 years, I have worked in gang intervention and violence prevention. I was a clinical research interviewer at Northwestern University, researching the mental needs and outcomes of former incarcerated youths.

I believe in my heart that juveniles in prison now for these crimes have the capacity to change. We are not irredeemable. We are not beyond repair. I want you give them the chance I had.

**Chair Brower:**

How old are you now, and at what age were you when last incarcerated?

**Mr. McElrath-Bey:**

I am 39 years old. I went into prison when I was 13 years old. I was released at 27 years old.

When examining age-appropriate sentencing schemes, we emphasize the importance of having a meaningful opportunity for release and giving that hope and light at the end of the tunnel. We are not saying open the door and let them all out, but give these juveniles something to which they can aspire. I guarantee the majority of them, if not all, will aspire toward something better.

**Chair Brower:**

This strikes a chord with me because I have prosecuted a juvenile in the federal system as an adult. He pleaded guilty to conspiracy to commit murder and the judge sentenced him to 20 years, which in the federal system means 20 years.

This juvenile-to-adult series of laws we have is an interesting part of our jurisprudence. I appreciate you being here.

**Kristina Wildeveld:**

I am a private criminal defense attorney, and I support A.B. 267. I have submitted my testimony ([Exhibit K](#)).

**Megan Hoffman:**

I am the Chief of the Non-Capital Habeas Unit with the Office of the Federal Public Defender, District of Nevada, but I testify today on behalf of myself. I currently represent several defendants who have been sentenced to life without parole in Nevada as juveniles. I support A.B. 267.

**Chair Brower:**

Do you represent persons who committed crimes as children and were convicted as adults in the federal court system?

**Ms. Hoffman:**

Yes. I represent individuals convicted in Nevada State courts who are appealing those State convictions in federal habeas proceedings.

**Vanessa Spinazola (American Civil Liberties Union of Nevada):**

We support A.B. 267. Dr. Bridget Walsh was here earlier but had to leave. She is a tenured professor in human and family development at the University of Nevada, Reno. She submitted a paper discussing the prefrontal cortex ([Exhibit L](#)).

**Regan Comis (M + R Strategic Services):**

We support A.B. 267. The Parole Board had concerns initially about A.B. 267, but those concerns were addressed. The Parole Board is neutral on the bill.

**Mr. Jones:**

The Nevada District Attorneys Association supports A.B. 267. Ms. Wildeveld said that juveniles at any age are subject to adult prosecution for murder. While this was true in the past, in 2013, A.B. No. 202 of the 77th Session passed into law, making the charge a direct file or automatic adult offense for any child over the age of 16 years old.

Any child between 13 years old and 15 years old is subject to a certification procedure. A certification procedure is when a juvenile court judge determines whether a child should remain in the juvenile system or be sent to the adult system based on the nature and seriousness of the offense, the child's prior record and any subjective factors.

**Mr. Sullivan:**

The Washoe County Office of the Public Defender supports A.B. 267.

**Mr. Yeager:**

The Clark County Office of the Public Defender supports A.B. 267.

**Jim Zeitler:**

I am neutral on A.B. 267. If passed, is the bill retroactive?

**Chair Brower:**

No, section 5 states it only relates to offenses committed on or after October 1, 2015, or for convictions on or after October 1, 2015, depending on the specific section of the bill.

**Mr. Dold:**

All the provisions apply prospectively except section 3 that applies retroactively. The bill impacts individuals already sentenced to life without parole.

**Chair Brower:**

Thank you for the clarification. We close A.B. 267 and open A.B. 214.

**ASSEMBLY BILL 214 (1st Reprint)**: Makes various changes related to public safety. (BDR 16-568)

**Assemblyman Michael C. Sprinkle (Assembly District No. 30):**

Assembly Bill 214, section 1, allows a limited portion of money from the Contingency Account for Victims of Human Trafficking to be used for fundraising for the direct benefit of the Contingency Account.

Section 2 allows the Director of the Department of Health and Human Services to allocate funds from the account if, at his or her discretion, there is an emergent need for the funds.

Immediately after this account was established in the 77th Session, we realized time is of the essence when attempting to protect victims. This bill allows the Director to allocate those funds. Assembly Bill 214 does not supersede the need for the Director to justify the funds, nor does it challenge the reporting mechanisms established to ensure the appropriate use of funds.

Section 3 increases the penalties on a person convicted for soliciting a child for prostitution, making the first offense a Category E felony, the second offense a Category D felony and the third or subsequent offense a Category C felony without the possibility of probation or suspension of the sentence.

We submit a proposed amendment ([Exhibit M](#)).

**Brett Kandt (Special Assistant Attorney General, Office of the Attorney General):**

The Office of the Attorney General worked on section 3 of A.B. 214 after consulting with stakeholders to ascertain the extent of the problem of sex trafficking in Nevada.

The laws regarding the solicitation of a child for sex have advanced; however, the demand side of the equation remains a large part of the sex trafficking problem. Prior to 2009, there was no differentiation between soliciting a minor for sex and soliciting an adult for sex—both offenses were misdemeanors. In 2009, the Legislature recognized that soliciting a child should carry a harsher penalty and the charge was changed to a Category E felony.

As we continue to address the demand side of the problem of sex trafficking in Nevada, the Attorney General recognizes there should be an appropriate escalating penalty for those who continue to repeatedly solicit children for sex. This is addressed in section 3 of A.B. 214.

A second offense is a Category D felony and will allow probation. A third or subsequent offense is a Category C felony and does not allow probation. This sends the message that sex trafficking and seeking to have sex with children in Nevada is unacceptable.

**Parker Stremmel (Dignity Health St. Rose Dominican Hospitals):**

We support A.B. 214, especially the part regarding the Contingency Account. This change will allow for more flexibility.

**Marlene Lockard (Nevada Women's Lobby):**

We support A.B. 214.

**Mr. Jones:**

The Nevada District Attorneys Association supports A.B. 214.

**Eric Spratley (Sheriff's Office, Washoe County):**

We support A.B. 214.

**A.J. Delap (Las Vegas Metropolitan Police Department):**

We support A.B. 214.

**Bob Roshak (Nevada Sheriffs' and Chiefs' Association):**

We support A.B. 214.



Senate Committee on Judiciary  
May 11, 2015  
Page 25

**Chair Brower:**

We will close the hearing on A.B. 214 and adjourn the meeting at 4:52 p.m.

RESPECTFULLY SUBMITTED:

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Cassandra Grieve,  
Committee Secretary

APPROVED BY:

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Senator Greg Brower, Chair

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

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	2		Agenda
	B	10		Attendance Roster
A.B. 50	C	14	Patrick Guinan	Work Session Document
A.B. 67	D	2	Patrick Guinan	Work Session Document
A.B. 225	E	4	Patrick Guinan	Work Session Document
A.B. 47	F	1	Patrick Guinan	Work Session Document
A.B. 183	G	1	Patrick Guinan	Work Session Document
A.B. 195	H	1	Patrick Guinan	Work Session Document
A.B. 212	I	1	Patrick Guinan	Work Session Document
A.B. 193	J	1	Patrick Guinan	Work Session Document
A.B. 267	K	7	Kristina Wildeveld	Testimony in Support
A.B. 267	L	4	Bridget Walsh	Testimony in Support
A.B. 214	M	2	Assemblyman Michael C. Sprinkle	Proposed Amendment