MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
March 20, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:11 a.m. on Friday, March 20, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27
Assemblyman Joseph Hogan, Clark County Assembly District No. 10

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Katherine Malzahn-Bass, Committee Manager
Julie Kellen, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:

Elizabeth Neighbors, Director, Lake's Crossing Center, Sparks, Nevada
Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada
John Petty, Chief Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada
Sam Bateman, representing Nevada District Attorneys Association, Las Vegas, Nevada
Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada
John McGlamery, Senior Deputy Attorney General, Office of the Attorney General, Carson City, Nevada
Elisabeth Shurtleff, Chairperson, Fight Fraud Taskforce, Las Vegas, Nevada
Ronald Dreher, Government Affairs Director, Peace Officers Research Association of Nevada, Reno, Nevada
David Humke, Member, Nevada State Juvenile Justice Commission, Reno, Nevada
Mike Pomi, Vice President, Nevada Association of Juvenile Justice Administrators, Reno, Nevada
Scott Shick, Chair, Policy and Legislation Committee, Nevada State Juvenile Justice Commission, Carson City, Nevada
Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada
Jonathan Van Boskerck, Chief Deputy District Attorney, Clark County District Attorney's Office, Las Vegas, Nevada
Teresa Lowry, Assistant District Attorney, Family Support, Juvenile, and Child Welfare Division, Clark County District Attorney's Office, Las Vegas, Nevada

Kristin Erickson, representing Nevada District Attorneys Association, Reno, Nevada
Shelly Scott, Deputy District Attorney, Juvenile Division, Washoe County District Attorney, Reno, Nevada
Tom Roberts, Lieutenant, Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada
Lew Roberts, Lieutenant, Robbery/Homicide Bureau, Las Vegas Metropolitan Police Department, Las Vegas, Nevada
Kristina Wildeveld, Defense Attorney, Las Vegas, Nevada

Chairman Anderson:
[Roll called.] We will start with Assembly Bill 264.

Assembly Bill 264: Revises provisions relating to defendants who are incompetent. (BDR 14-995)

Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27:
I am here to present Assembly Bill 264. I have my expert sitting next to me on my left, Dr. Elizabeth Neighbors, who is the director of Lake's Crossing Center. This is the state's only forensic facility.

When I am not here for session, I work for the Second Judicial District Court in the Specialty Courts Division. One of my duties is to manage the Mental Health Court. Through that professional experience, it came to my attention that we had some problems with Lake's Crossing in that we were sending, perhaps, the wrong people there.

Late last year, Ms. Neighbors and I talked, and I agreed to submit this bill. She has done most of the work on it, so I will let her present it more clearly.

This bill defines the circumstances whereby an individual who is incompetent without probability of obtaining competence in the foreseeable future can be committed to Lake's Crossing. I know that this Committee is familiar with those legal terms. Lake's Crossing has been overcrowded, and we have tried to build a new Lake's Crossing in Las Vegas, but that had to be put on hold due to the fiscal crisis. We have worked through many issues over the past year, but what seems to be happening now is that people with dementia, elderly people with nursing needs, are being committed to Lake's Crossing. That is not what the facility is for. The danger in doing that is they take up a bed when a more violent person should be there instead.

Elizabeth Neighbors, Director, Lake's Crossing Center, Sparks, Nevada:
[Spoke from prepared written testimony (Exhibit C).]

Chairman Anderson:
The Chair did receive the amendments (Exhibit D) in a timely fashion, and they have been distributed to the members of the Committee. Would you take us through the proposed language changes, predominantly in section 4 of the bill?

Elizabeth Neighbors:
Yes. In section 4, lines 7 through 10, it requires that we have the appropriate input that we are requesting and clarifies timelines. We would like to change the existing language to read as stated in the proposed amendments handout.

The second change would be in section 4, lines 30 through 38. One of the things that we wanted to do was limit the category B felonies that would qualify a person for petition for commitment under this statute. We did provide that list in the original request. After further review, there were several we felt should be added, which are listed in the proposed amendments handout.

Chairman Anderson:
Your concern is the three-judicial-days-prior-to-the-hearing language in the first amendment? Is that the point you are trying to get there?

Elizabeth Neighbors:
Yes, that was one point. Also, we wanted to clarify who it goes to and the timeline. And also, we need to be notified by the prosecutor. That was an issue. With some experience with this law, we found that we did not know that a petition was filed until well after it had occurred, or even at the hearing, which did not allow us to give any input about whether it was appropriate or not.

Chairman Anderson:
I know the agency would like to write the language; however, I think the bill drafter sometimes comes away with the view that some things are understood. We will see what the bill drafter's suggestion is for that. You want it to be specific to the prosecution, and you do not think that they hit your mark, correct?

Elizabeth Neighbors:
The law requires that the petition be filed by the prosecutor. I believe that we perceived that the appropriate person to notify us would be the prosecutor.

Chairman Anderson:
You want a redundancy in the statement?

Elizabeth Neighbors:
I do not think we saw it as a redundancy, but if there is one, we would be happy to work to resolve that.

Chairman Anderson:
I am not the bill drafter, but I am trying to figure out why he may have written it the way he did. I want to make sure that the bill drafter is okay with the fact that we want to clarify the time factor, the three judicial days, and that the request from the division is received.

Elizabeth Neighbors:
There is no requirement for the prosecutor to notify us when they file a motion. We would not be looking for that unless we are notified formally.

Chairman Anderson:
That is the reason why you are requesting that?

Elizabeth Neighbors:
Yes.

Assemblyman Horne:
My question deals particularly with the amendment, section 4, lines 30 through 38, but I can hold my question.

Assemblyman Carpenter:
Could you explain the meaning of "dangerousness" on page 4, line 14?

Elizabeth Neighbors:
I believe that refers to what would be in a risk assessment. This person currently presents a sufficient danger to the community, and a maximum security facility is necessary to keep the community safe from events that this person might be involved in.

Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada:
We are here to support the bill. I would like to introduce Chief Deputy John Petty. He is also from the Washoe County Public Defender's Office. He has done some work with the bill drafters behind the scenes with the amendments, and he has far more expertise in this area than I do.

John Petty, Chief Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada:
I act as the liaison between our office, the courts, and Lake's Crossing Center. We are here to support A.B. 264 as it was submitted originally. We are also in support of the amendments that were offered to you this morning. We believe that the amendments are appropriate, and they accomplish the goals that are important for Lake's Crossing, for our clients, and for the prosecution.

Assemblyman Horne:
I am not sure if you have had the opportunity to review the proposed amendments.

John Petty:
I did review them, and in fact, I had input in some of the language. One of the concerns that we had, and Dr. Neighbors mentioned this, was that when the prosecution was going to make a motion under *Nevada Revised Statutes* (NRS) 178.461, sometimes Lake's Crossing would not be notified of that motion. The amendments require the prosecutor to notify Lake's Crossing if they are seeking a 461 commitment. That places the duty on Lake's Crossing to prepare a comprehensive risk assessment. That risk assessment is then shared with the court, the prosecuting attorney, and the counsel representing the person, at least three days prior to the hearing, so we can see what that comprehensive risk assessment says. That is beneficial to everybody involved.

Assemblyman Horne:
In section 4, lines 30 through 38, paragraph (h) talks about burglary with the use of a deadly weapon. That is a broad charge.

John Petty:
It is. These amendments limit the kinds of crimes that are subject to a 461 commitment. When this section was created last legislative session, it said that individuals who had been charged with category A and B felonies would be subject to a potential 461 commitment. This bill limits the number of category B felonies that can be considered. Even though this appears to be broad, we think that the limitation is appropriate, and we support it.

Chairman Anderson:
I think Assemblyman Horne's concern is the deadly weapon statement rather than the use of a firearm statement which is covered in paragraph (j) of the amendment. Burglary with the use of a deadly weapon is much broader than the use of a firearm. If you are trying to pull away from all category B felonies, have you not reincluded all category B felonies with this?

John Petty:
No. I will give you an example. There is a category B felony that deals with security fraud. Unless one is holding a trader hostage with a gun to get them to do the securities, it would not come into play. There are category B felonies out there that do not anticipate the use of a deadly weapon. This is an attempt to limit the number of category B felonies that can be considered under NRS 178.461, and we think that is a good goal. At a future date, we might tighten up the language.

Sam Bateman, representing Nevada District Attorneys Association, Las Vegas, Nevada:
We were in consultation with Dr. Neighbors regarding this statutory scheme and its changes. We are in support of it.

I assume Assemblyman Horne's question is specific to burglary with a deadly weapon. The deadly weapon enhancement can be used broadly. I think the greater concern is an individual who is doing residential burglaries. We had one particular incident in Las Vegas where a woman was going to the same house over and over again; she ended up with a crowbar, broke into that residence, and attacked the residents of the home with the crowbar. That would be an example of a burglary with a deadly weapon where we think it is sufficiently violent enough that she would be a good candidate for Lake's Crossing.

Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:
We are in support of this bill, and we thank Assemblywoman Leslie for bringing it. I think it recognizes that there is a standard for forcible mental health commitment that is related to dangerousness, and we think the enumeration of these crimes is appropriate in light of that. This is a great bill.

Chairman Anderson:
Have you reviewed the delineation of category B felonies with use of a firearm and burglary with the use of a deadly weapon?

Lee Rowland:
Yes, I have just seen it. I have to remain neutral, and I cannot give an official American Civil Liberties Union (ACLU) opinion, but my sense is that those do track a certain degree of violence that is appropriate for the initiation of those proceedings. Because the judge has discretion, the addition of those crimes does not trouble me.

Chairman Anderson:
I will close the hearing on A.B. 264.

Let us turn our attention to Assembly Bill 322. We will open the hearing on A.B. 322.

Assembly Bill 322: Makes various changes concerning conduct related to racketeering. (BDR 15-1000)

Assemblyman Joseph Hogan, Clark County Assembly District No. 10:
I am pleased to bring you Assembly Bill 322. This bill has been designed by the Attorney General's Office to be a new and powerful crime fighting tool to prosecute and punish those who take advantage of Nevada consumers.

Assembly Bill 322 expressed the Attorney General's commitment to protect consumers from exploitation by offenders posing as legitimate businesses. Without this bill, Nevada's fraud fighters had to pursue each separate, small, fraudulent transaction to prove intent and convict perpetrators of relatively minor individual crimes. With this bill, we can punish the overall fraudulent scheme by capturing multiple transactions, which, when tallied-up, constitute a felonious pattern of criminal behavior sufficient to take the perpetrator off the streets and stop the cruel and costly deception practiced on unsuspecting consumers.

I hope you agree with me that we should support the Attorney General's effort to distill the lessons they have learned over years of consumer protection into a more efficient and effective enforcement technique.

I ask Mr. McGlamery, from the Attorney General's Office, to acquaint the Committee with the particulars of the bill.

John McGlamery, Senior Deputy Attorney General, Office of the Attorney General, Carson City, Nevada:
This bill was passed during the last legislative session, and at the last minute, it did not go through. The bill has passed both houses with this current language once before, and we are asking for this to be considered again.

The current Nevada law limits the remedies available to the Attorney General's Office, in the case of organized deceptive trade rings, to misdemeanor cases for the first offense. This bill intends to remedy that situation. Section 1 describes the conduct which would be made criminal by the statute. Criminalized, fraudulent, deceptive trade violations are where the scheme steals a little money from a great number of people.

This proposal incorporates the standard definitions of fraud and attaches a minimum amount of money needed to prosecute the scheme. Since these types

of scams involve small amounts of money, a small combined amount is stated in order to allow the Attorney General to take action when the scheme involves hundreds of victims.

The requirement for pattern of conduct with similar characteristics, and not isolated incidents, means that the law will only apply in the case of clear, fraudulent schemes and not mere mistakes. Current law is so weak that the scammers know that they can make more money in a scam than they would lose in any fine from a misdemeanor conviction. By making the crime a felony, it takes away the "cost of doing business" factor. This statute also combines the deceptive trade aspect to keep defense attorneys from claiming that the Attorney General's Bureau of Consumer Protection has no jurisdiction to prosecute these matters.

Section 2 adds the crimes described in section 1 under the definition of racketeering, so that the remedies available for racketeering are available for this crime. This includes fines in the amount of gross profits made by the scheme and possible forfeiture of the proceeds of the criminal enterprise.

Section 3 adds the transport of property as part of the scheme to allow the prosecution of those who aid the criminal scheme, such as those who are involved in the transfer of paper checks, electronic checks, and other monies and funds by automatic clearing houses, credit card and transaction companies, and others who knowingly assist in such schemes.

Section 4 sets the statute of limitations for this criminal act.

Chairman Anderson:
As an example, if I intentionally pass a bad check for the amount of $300, and I wrote another one for another $300 a year later, would this apply?

John McGlamery:
No. This is not intended to address that kind of situation. We are talking about deceptive trade schemes and business transactions, where a business takes money from an individual or another business in a fraudulent manner. We are not talking about passing bad checks but about business schemes such as the case of telephone company scams where they bill consumers $20 per check for things that the consumer did not order.

Chairman Anderson:
We are going to put the offenders in prison at a cost of $20,000 a year. The cost of keeping people in prison has become a major concern to the state.

John McGlamery:
Any one offense is not a problem, but these are patterns by people who are intentionally setting up these schemes. They set the amount taken per each transaction so low with the idea that they will never be prosecuted. We are talking millions of dollars here and not about a couple of hundred dollars. Current remedies are not sufficient to address that.

Assemblyman Ohrenschall:
I thought much of this was covered under the habitual fraudulent felon statute. I wonder if you can explain why this is needed, and how they would work together if it does pass?

John McGlamery:
No, this is not a habitual crime. Many times, they do not have a prior criminal history. They have gotten away with this crime so much, and no one has been able to prosecute them, because there is no prior criminal history. In a habitual criminal situation, there must be a series of convictions. This situation would not be habitual but a pattern of conduct where we can show a racketeering fraudulent scheme to steal a little money from a lot of people.

Assemblyman Gustavson:
It seems to me that two transactions of $300 in a four-year period are not severe enough to make it a category B felony.

The definition of racketeering in the bill is two similar transactions within four years, but the definition of racketeering in NRS 207.390 states that it is two incidents occurring within five years. I do not know if that is a typo, or am I missing something?

John McGlamery:
One will see these schemes going on where there are many victims out-of-state and only a handful in-state. I had a case recently where I had a scheme of people stealing cars. The court said that this was a business transaction, so it was civil; however, they were actually stealing cars. We have to show that it is part of a larger pattern in order to get to the court and convince them that this is a crime that deserves to be punished.

Assemblyman Gustavson:
I asked about the statute of limitations.

John McGlamery:
The statute of limitations for deceptive trade is four years. It is easier to have the statutes on one timeline. It is not because it is a mistake, but to be consistent with NRS Chapter 598.

Assemblyman Segerblom:
Is this intended for the "Prince of Nigeria" that keeps emailing me?

John McGlamery:
I would love it to be, but, unfortunately, that is an international crime. It would apply to the Canadian scheme that we are prosecuting now in federal court. We are prosecuting the automatic clearing house (ACH) who assisted a Canadian theft ring where they were billing consumers' credit cards an amount of money around $100. In this case, Wachovia Bank was involved in the crime. Wachovia Bank knew it was a theft, but they helped them anyway. This would address those types of situations.

Elisabeth Shurtleff, Chairperson, Fight Fraud Taskforce, Las Vegas, Nevada:
[Spoke from prepared written testimony (Exhibit E).]

We are in support of any tools that members of the taskforce can have or that the state can have to prosecute bad actors. That is why I am here today: to say that the taskforce is in support of A.B. 322.

Ronald Dreher, Government Affairs Director, Peace Officers Research Association of Nevada, Reno, Nevada:
We are in support of Assembly Bill 264 as well as this bill. On this bill, we have confronted these types of issues in the north from telemarketing agencies that target our senior citizens; even though the victims said no to services, they would get a bill for $20 or $30, and this would be a repeated transaction. We repeatedly went to the media to say that this is a scam. This is great legislation, and our association definitely supports A.B. 322.

Chairman Anderson:
I will close the hearing on A.B. 322.

Assembly Bill 237 is a bill that I requested on behalf of the Committee ahead of time. I will be presenting this bill, so Vice Chair Segerblom will preside over the hearing.

[Recessed and reconvened.]

Chairman Anderson:
We have a quorum present. We have a bill draft request (BDR) for Committee introduction.

BDR 15-1155—revises provisions relating to certain crimes involving firearms, ammunition or explosives. (Later introduced as Assembly Bill 481.)

The Chair will entertain a motion.

> ASSEMBLYMAN CARPENTER MOVED FOR COMMITTEE INTRODUCTION OF BDR 15-1155.
>
> ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN HORNE WAS ABSENT FOR THE VOTE.)

Vice Chair Segerblom:
We will open the hearing on Assembly Bill 237.

Assembly Bill 237: Revises the provisions governing the certification of certain juveniles as adults for criminal proceedings. (BDR 5-825)

Assemblyman Bernie Anderson, Washoe County Assembly District No. 31:
Assembly Bill 237 is an issue that we have dealt with for many years. I have asked Mr. Humke to help present this bill. Of the issues that have come in front of us, we were very concerned about the effect of the change in the statutes regarding the age to be eligible for adult sentencing. Currently, anyone 14 years of age or older can be tried and convicted in the adult prison system. It seems to be the appropriate time to move the age back to 16 years old rather than 14 years old.

I feel strongly about the issue. In 1997, we toured the Southern Nevada Correctional Center. As we walked across the yard, the chair of the Senate Judiciary and I were talking with the warden as a group of minority members approached us. They asked how it was possible that they would have, in the yard with them, an individual who was 15 years old. They had to protect him because there was nothing to inhibit another prisoner from taking advantage of him physically and emotionally. There was also a lack of services for that age group to change behavior. We want to see protection of society, fair punishment, and behavioral change. It is not possible for the system to provide for individuals between the ages of 14 and 16, which is a difficult and troublesome age.

I believe that it is important to change the age from 14 to 16 years of age, and I think it is beneficial to the system as a whole and beneficial to the individual who made a mistake to give him the resources necessary to help him.

Jennifer Chisel, Committee Policy Analyst:
As the Committee heard during the first week, when our Committee counsel presented testimony on some of the Nevada Supreme Court cases and federal court cases that may have affected Nevada law, this was one of the cases presented. The Nevada Supreme Court, in the case of *In re William M.*, 124 Nev. Adv. Op. No. 95 (Nev 2008), held that subsections 2 and 3 of NRS 62B.390 unconstitutionally violated the Fifth Amendment of the *United States Constitution*. Under NRS 62B.390, a juvenile court may certify a child accused of a crime for criminal proceedings as an adult. Subsection 2 allows for presumptive certification, which requires the court to certify the child as an adult if he was age 14 or older at the time of the offense and is charged with "a sexual assault involving the use or threatened use of force or violence against the victim; or an offense or attempted offense involving the use or threatened use of a firearm."

Under subsection 3 of NRS 62B.390, there are listed exceptions to the presumptive certification. Under this subsection, a court is prohibited from certifying a child under subsection 2 if it finds, "By clear and convincing evidence that: the child is developmentally or mentally incompetent to understand his situation and the proceedings of the court or to aid his attorney in those proceedings" or his criminal conduct was "substantially the result of the substance abuse or emotional or behavioral problems" which could be treated under the jurisdiction of the juvenile court.

This was the result of two consolidated court cases involving two appeals from the state, where the certification of minors was at issue. In both cases, counsels for the minors argued that the minors were not present or involved with the thefts they were charged with. Because the minors denied being present or involved, they could not show that the criminal conduct was caused by substance abuse or incompetency. The court found that the exceptions in subsection 3 did not apply; therefore, both minors were certified as adults.

On appeal, the Nevada Supreme Court held that subsections 2 and 3 of NRS 62B.390 violated the minors' Fifth Amendment right against self-incrimination because the sections required the minors to admit criminal conduct in order to rebut the presumptive certification. The court held that this privilege against self-incrimination applies to juvenile proceedings and that subsections 2 and 3 unconstitutionally required the minors to incriminate themselves, and therefore, violated their Fifth Amendment rights. That is why

this bill is brought. The court has held that subsections 2 and 3 of NRS 62B.390 are unconstitutional and cannot be enforced until the Legislature takes action to change that.

Vice Chair Segerblom:
When did we change the age to 14 years old?

Assemblyman Anderson:
I believe that we did that in the 1995 legislative session as a result of some of the legislation that we passed. We dealt with it a couple of times in other types of legislation. There was a concern from the District Attorneys Association, as I recall, with regard to gang membership and getting younger children to commit murder in order to join the gang. There was hope that those situations would be stemmed as a result of making the age 14 years old rather than 16 years old. Unfortunately, the change in the age did not change the behavior of gangs.

David Humke, Member, Nevada State Juvenile Justice Commission, Reno, Nevada:
I serve as a member of the Nevada State Juvenile Justice Commission, and I have served there for many years. However, I am not speaking for that commission today. This bill was a subject of their Policy and Legislation Committee, on which I serve. There is a person here to speak on behalf of that committee, Mr. Scott Shick of Douglas County Juvenile Probation.

To introduce some more witnesses, from Washoe County is Chief Probation Officer Mike Pomi, who will speak for the Nevada Juvenile Justice Administrators Association in favor of this bill.

Assemblyman Anderson described the situation in the 1995 Session. This house was tied at 21. As you might imagine, in a tie session, there were many close issues, and the results of this bill, the *In re William M.* case, and that legislative session, were very close calls. It was something upon which he and I agreed. I voted for the legislation. There was an extreme concern with gang activity at that time, and that is what predominated. What predominates today is that the juvenile justice system has changed. One of the things that I have learned since 1995 is most of the "tough on crime" legislation as to juveniles that swept the nation in the 1990s was a bit behind the curve. Serious crime among juveniles had declined by the time most of the legislation was passed. I was in the Army National Guard a long time ago, and everyone was fighting to win the Vietnam War long after that war was over. That is a common theory in the military as well as it is in the justice system. The juvenile justice system has taken this issue seriously. They have many tools available to work with

juveniles, including violent juveniles, which they did not have in the early 1990s.

In 1995, this legislation came from the former Clark County District Attorney (DA) and Nevada Governor, Robert Miller. District Attorneys want to be tougher on crime, and they want more tools in order to prosecute offenders.

You have some policy decisions to make. One deals with *In re William M*. This needs to be implemented by legislation. As to the other changes in the bill, some of them represent judicial discretion, which most Judiciary members believe in. Some of the changes also affect prosecutorial discretion. Being active in local government, I have come to believe in prosecutorial discretion.

Mike Pomi, Vice President, Nevada Association of Juvenile Justice Administrators, Reno, Nevada:

I am here in support of this legislation for the administrators of the State of Nevada who administer juvenile justice. We had our meeting yesterday and discussed this legislation, and we are all in full support of its implementation.

The differences in our state today in juvenile justice are many. Some of the things moving forward are Juvenile Detention Alternative Initiative (JDAI) sites in Washoe and Clark Counties. We look at the reduction of incarceration in our detention centers as a way of working with children and putting them out in the community, where they belong, with their parents or guardians. As an example, in Washoe County, I started the morning with 39 youths in detention, including 6 girls. We look at a more humane way of dealing with children. In Clark County, there are about 188 youths in detention as of last night. They used to have a bed capacity of 260, but they closed the old Zenoff Hall as part of their JDAI in Clark County.

Senator Horsford is putting language through this session to implement the JDAI court strategies throughout the State of Nevada. We could be the first state to implement a JDAI state initiative. New Jersey is a state-driven system, and they are the first Casey Foundation site to be implementing JDAI statewide, but we would be the first jurisdiction with county-driven court systems. We would reach a first in juvenile justice. We are nationally recognized by the Casey Foundation, and their director was out here last month and met with Chief Justice Hardesty, Attorney General Cortez Masto, Senator Horsford, and Judge Doherty, who is my presiding superior in Washoe County. The director was here to initiate the statewide process of implementing the move from reliance on detention in our state toward a community-based correctional system. As an example, Michael Patterson in Elko County has reduced his detention population to six youths, and he has a reporting center that was

supported by his county commissioners. Those are graphic examples of our ability in juvenile justice to work with children in their community. However, we believe in the fact that if a child needs incarceration, and there is a due process hearing and the court sees it as a necessary obligation to the state, then those children will be committed.

When this legislation was passed in 1995, we did not have Summit View Youth Correctional Center in Clark County. That is a secure setting, while Elko and Caliente are campus settings where children can physically walk away because there are no fences, chains, or bars keeping them in. Summit View is a juvenile prison.

To give some perspective, the statewide juvenile justice administrators and the courts administrating over us have reduced our bed capacity by 88 beds. By doing that, we saved the state $1.5 million in the past year. Summit View has closed 48 beds, Elko has closed 20 beds, and Caliente has closed 40 beds. By our best practice of implementing an evidence-based initiative, we have been able to move away from secure detention and toward a polished system where we work with children in the community. That does not mean that we do not have many ills that we have to address. We do not have enough mental health or drug and alcohol help. When the bill looks at those categories, it is a weakness within our state that needs to be increased. As this body moves this legislation forward, which we support, we also need the capacity to treat children with drug and alcohol abuse and mental health disorders, which this bill speaks to.

Assemblyman Anderson and I both gave an example of seeing a 15-year-old on a prison yard. I used to do prison tours in Carson City from Washoe County, and when someone watched a 14-year-old react to a prison setting, it became obvious, as we walked out the gates and started driving back to Reno, that it had no impact. Their minds and maturity level are not developed enough to have an understanding of the raw brutality that a prison puts on a child. They are not safe in prison.

Director Skolnik spoke to our Juvenile Justice Subcommittee of the Advisory Commission on the Administration of Justice that Senator Horsford chaired through the Supreme Court over the summer; he said the worst population for him to deal with is 14- to 25-year-olds. He does not have the ability to safely manage them. The prison in Jean shut down, and he had a difficult time managing that population and had to bring in older inmates to control the behavior of the 14- to 25-year-olds who were incarcerated. I also worked with a gentleman who was 16 years old when he was incarcerated in the Carson City prison. I met him when I did the prison tours. He was released on a

program because he had committed a drug-induced murder in Clark County. He was released after 20 years of incarceration, and he speaks to our juveniles because he was released successfully. He went through horrific pain while incarcerated. He had to fight off sexual assaults to protect himself.

When we look at certification, the juvenile justice administrators do the investigations for the court across the state. We take into account the minor's opinion, and we look at the sophistication of the child, the crime that he committed, the family background, and the other factors that are considered in a certification. We also look at the charge and take it seriously. We believe that our communities should be safe.

In 1995, our children were considered super predators, but that is not the case. If you look at an individual child, that is what he is. He is a child. The adult prison system is not built to handle young juveniles. We are capable, with your support, of handling these types of youths, and the age requirement should be raised up to 16 years old. From the courts' perspective, the judges are behind this bill as well as the administrators. This is a move to correct an action that harms children.

Scott Shick, Chair, Policy and Legislation Committee, Nevada State Juvenile Justice Commission, Carson City, Nevada:

The committee reviewed this legislation and stand in support of it based on what juvenile probation officers and courts are required to do in certification cases. I do training in the Peace Officers Standards and Training (POST) academy, and we train probation officers, in category 2, to take all things into consideration in these cases. We start with public safety, accountability, and victim impact in any certification case. After that, we break down the domains that have impacted this child's life: family, school, and other situations or circumstances. We do not allow a mental health capacity or one single domain to be a reason for the negative outcome of this child's behavior. We do a comprehensive bio-psycho-social evaluation, including mental health professionals and any other professionals necessary to get to the core of the issues, prior to making a certification decision.

Mr. Pomi just testified to the process that juvenile justice administrators and juvenile probation officers use to pursue certification by discretionary order of the court. If a youth needs to be certified, that will be supported and that will move forward. There are children in our prison system now that are certified, but for most, that does not work. A 14- or 15-year-old boy who shoots at a police officer and kills him, or whatever the circumstances may be, is a terrible situation and needs to be addressed. But to take them into the adult system is counterproductive. It is more productive to put them into the juvenile prison

system and put a couple years of requirement on to ensure a response to the treatment.

I will cite a case in Clark County. There was a drunk driving situation with fatalities. There was a strong influence by the parents to keep the boy in the juvenile justice system. A presumptive certification was asked for by the prosecutor but overridden by the judge. The boy was kept in juvenile detention in Clark County for two years, and he completed his education, completed community service, and completed his sentence.

A 14- to 16-year-old, in particular cases, does not belong in the adult system. All due process should be exercised prior to making these decisions. That was a finding of the policy and legislation committee. After 28 years in juvenile justice, I have never seen a child run away from placement. There is law regarding those who abscond from placement. They can be subject to certification. Taking a look at it across the board, we are still protecting community safety along with public and victim safety.

Assemblyman Hambrick:
I am chairman of the Juvenile Justice Commission. I was appointed to the commission by former Governor Guinn. I have 30 years experience in law enforcement, and I had some preconceived notions when I was appointed to the board. In the past several years, I have seen these men and women address certain issues in a pragmatic and professional manner. They are trying to address issues, and they realize there are certain individuals that the system cannot help. The individuals that I have met around the state are dedicated to trying to get these children back home and back in society. I support this legislation, and I urge this entire Committee to support it.

Scott Shick:
Youths are certified across the nation. There are some states that have 14-year-old thresholds for this. There are many regrets about having a 14-year-old threshold because the implication is that the adult systems cannot handle these cases once those children are certified. Age 16 is a better common denominator.

Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:
I am speaking in support of A.B. 237. The Nevada Supreme Court's case *In re William M.* directs us to do something with regard to presumptive certification. I believe the language in A.B. 237 achieves that goal. I am also in support of the age difference.

I want to make it clear that NRS 62B.330 addresses cases that automatically go before criminal court. In this bill we are not talking about cases involving murder or attempted murder or any other offenses that arise out of those types of cases. *Nevada Revised Statutes* (NRS) 62B.330 also addresses sexual assault and attempted sexual assault, crimes involving the use of a firearm, felonies involving death or substantial bodily harm, and any other offense if the person had already been convicted of a criminal offense. Those offenses are treated in adult criminal court, and they will continue to be so. In this bill we are talking about the crimes that fall short of such severe conduct and how we treat those.

I am aware that there are other states that deal with this issue, and I do not know if it is accurate to compare our state to other states expressly based on age without looking at the entire scheme. Other states have different ways of certifying juveniles, and if one looks only at age, but their scheme of certifying is different, I do not think it would be an accurate comparison. Considering that we do have automatic certification procedures, and considering that we still have discretionary certification—the courts still have that option—I think that this bill adequately addresses presumptive certification.

I received the Nevada District Attorneys Association's proposed amendments (Exhibit F) and understand their way of dealing with the presumptive certification portion of this bill. We would oppose that method of making the changes to presumptive certification because it leaves in the problematic language that the Nevada Supreme Court expressly found unconstitutional. I believe that the amendment provides that the process would be the same but any of those potentially incriminating statements would not be allowed to be used. However, when we are talking about adult criminal court and trials, we can say that the jury cannot find out this information. They are the fact finder, and they should not hear this information. In juvenile proceedings, the judge is the fact finder, and it is difficult, if not impossible, to go back once the judge found out that a juvenile made these statements. To leave that language in there would contradict the Nevada Supreme Court's direction in *In re William M.*, and that is why the language in this bill, as is, is the correct way to proceed with presumptive certification.

Vice Chair Segerblom:
To follow up, currently, if a 14-year-old kills a policeman, he can still be prosecuted as an adult?

Jason Frierson:
My reading of NRS 62B.330 provides that it would not even be part of the juvenile process; it would automatically fall outside the jurisdiction of juvenile court for murder or attempted murder.

Sam Bateman, representing Nevada District Attorneys Association, Las Vegas, Nevada:
We have opposed the existing bill. A more nuanced approach is to make sure that the Committee knows that there are two portions of the bill before you. One addresses the Supreme Court's decision as it relates to presumptive certification. That decision has nothing to do with the change in the minimum age from 14- to 16-years-old. That is a separate issue.

Vice Chair Segerblom:
Would that change of language be under subsection 3, paragraph (b)?

Sam Bateman:
The Supreme Court addresses subsections 2 and 3. Subsection 2 requires certification when certain crimes have been committed. Subsection 3 allows the juvenile to rebut that presumption by making a certain showing regarding either his mental defects or his substance abuse.

Vice Chair Segerblom:
In the bill we have in front of us, where they struck out subsection 3, paragraph (b) and changed the language, which is the change that addresses the Supreme Court decision, correct?

Sam Bateman:
That is correct.

Vice Chair Segerblom:
Do you object to that?

Sam Bateman:
We agree that there needs to be a fix.

Vice Chair Segerblom:
So you have different language?

Sam Bateman:
Yes.

Vice Chair Segerblom:
That is the amendment we have.

Sam Bateman:
That is correct. We agree that there needs to be a change, and we agree that the presumptive certification needs to be addressed, go forward, and comport with the law as it was stated in *In re William M*. We disagree slightly with the way in which the bill addressed it, and that is the subject of the amendment that I provided to the Committee. It is our belief that our amendment is the appropriate vehicle to address that particular decision and to fix the presumptive statute.

I want to make it clear that the age issue is a different issue and was not addressed in that opinion.

The Nevada District Attorneys Association's position is that we are opposed to changing the minimum age. I have some witnesses here to speak to these issues. Our position is that we would support the bill with the amendment. We are opposed to the change from 14-years-old to 16-years-old.

I would note that when we are talking about the 14- to 16-year-old age group, last year, in Clark County, we certified a total of ten youths via the presumptive certification process and the discretionary certification process. We are not talking about a significant number, and we take this very seriously.

I am a member of our gun crimes unit in Clark County, and I have the unenviable task of dealing with juveniles who have been certified. It is important when we are talking about the 14- to 16-year-old group that we also focus on the nature of the types of crimes these minors have committed. We are tasked with addressing serious crimes where victims have suffered.

Assemblyman Anderson:
If we changed the certification as outlined in the bill, do you believe that the ten youths who were prosecuted in Clark County, given the seriousness of their crimes, would still have been certified?

Sam Bateman:
I would prefer to defer to the individuals who are in charge of our juvenile unit regarding your question.

Assemblyman Anderson:
I will ask my question once those individuals have presented their testimony.

Sam Bateman:
Jonathan Van Boskerck will speak first as it relates to our proposed fix to the *In re William M.* case. After him, I would ask Teresa Lowry to discuss certifications with specific regard to the age issue.

Vice Chair Segerblom:
There is a third person sitting at the table.

Sam Bateman:
I believe the third person is Lieutenant Lew Roberts with the Las Vegas Metropolitan Police Department (Metro). He is lieutenant over the homicide division of Metro. He has considerable experience in gangs, the gang problem we have had since 1995, and the manner in which it has changed.

Vice Chair Segerblom:
My understanding is that your proposed amendment to correct the Supreme Court issue is on the last page of the handout, which is a new paragraph (c)?

Sam Bateman:
That is correct.

Jonathan Van Boskerck, Chief Deputy District Attorney, Clark County district Attorney's Office, Las Vegas, Nevada:
I would like to speak to you, briefly, about juvenile court jurisdiction, certification, and the Supreme Court's recent opinion of *In re William M*.

First, juvenile court jurisdiction is defined by statute. Certain crimes are defined as being outside of the jurisdiction of juvenile court. This means that prosecution begins immediately in adult court. Those crimes are murder, attempted murder, a Columbine-type situation, any offense where the child has previously been convicted as an adult, and cases involving the use or threatened use of a firearm where the minor is 16 years or older at the time of the offense and has been previously adjudicated as a delinquent child for an offense that would be a felony if committed by an adult. Additionally, a violent sexual assault where the child was 16 years or older at the time of the offense and has been previously adjudicated as a delinquent on a felony offense is carved out of the jurisdiction of the juvenile court, immediately.

The process whereby juvenile court can move, transfer, or waive jurisdiction, and thereby certify for criminal prosecution is called certification. In Nevada, prior to *In re William M.,* we had two types of certification by statute. The first was discretionary, and the second was presumptive. As a preliminary matter

for both of those, the Nevada Supreme Court requires a showing of prosecutive merit or probable cause that the offender committed the offenses before the court. Once the court determines, for probable cause purposes, that an offense has been committed by the minor, the court then turns to the two-tiered certification system.

The first tier is discretionary certification. The state can move for discretionary certification where a juvenile is 14 years or older at the time of the offense and has been charged with an offense that would be a felony if committed by an adult. In order to give guidance to the juvenile courts of Nevada, the Nevada Supreme Court, in *Seven Minors,* 99 Nev. 427, 664 P.2d 947 (1983), provided a matrix to help the courts make a rational discrimination between the vast majority of juveniles who should remain under juvenile court jurisdiction and the handful of dangerous juveniles who need to be processed in the adult system. This matrix consists of the nature and seriousness of the offense and the minor's previously admitted or adjudicated offenses. Those two categories are to be given the most weight. The final category for examination is known as the subjective factors. This category cannot be used to mandate transfer but can be used to retain jurisdiction. The court directs that the juvenile courts are to look at things such as age, maturity, psychological and social evaluations, and the child's connection to the community. At that point, the burden is on the state in a discretionary certification to prove, by clear and convincing evidence, that the public safety and welfare requires transfer.

The second form of certification, presumptive certification, begins with the finding of probable cause or prosecutive merit. This means that the court needs to determine, at the certification hearing, that the juvenile did, to the level of probable cause, commit the crimes charged. Once that finding is made, if the child is 14 years or older and is charged with an offense involving the use or threatened use of a firearm or violent sexual assault, the court is required to transfer the case to adult court, unless the court finds, by clear and convincing evidence, that there is a developmental delay issue, the child is not in a situation to understand the proceedings of a court or assist his counsel, or the child suffers from substance abuse or emotional or behavioral problems. That problem must substantially influence the decision to engage in the conduct at hand and must be treatable within the confines of juvenile court jurisdiction.

In *In re William M.*, the Supreme Court was concerned about the "substantially influenced" language. They were not so much concerned about the juvenile who says, "I did not do it." That can be handled through the prosecutive merit or probable cause phase. What they were concerned about was, in order to get the benefit of the rebuttable presumption, the child essentially has to say, "Yes, I did it, but I did it because I had a substance abuse or emotional or

behavioral problem." They were concerned because, in their view, this amounted to a compelled inculpatory statement because the court requires them to make the statement to get the benefit of the rebuttable presumption. That statement could be used against them in a future criminal or delinquency proceeding. That was the basis of *In re William M*.

Assembly Bill 237 attempts to deal with that opinion by changing the language of NRS 62B.390 to say that juvenile court shall not certify if the court finds, by clear and convincing evidence, the existence of a substance abuse, emotional, or behavioral problem, and that problem is appropriately treatable within the confines of juvenile court jurisdiction. The concern we have with the language that attempts to correct the problem identified in *In re William M.* is that the child may still make a statement, an admission, that can be used against him. For instance, the way this typically works in Clark County, we move for certification; the child is then referred to a mental health professional for examination to see if there is a substance abuse, emotional, or behavioral problem. In the context of that examination, the child will have to make statements. If the child should, during that examination, tell a mental health professional, "Yes, I did it," there is nothing in A.B. 237 that would prevent the state from using that statement at a future criminal or delinquency proceeding. Additionally, if the child makes statements to substantiate the existence of a substance abuse, emotional, or behavioral problem, that would give the state a basis for a motive, for identification, and to connect the child with the criminal conduct. We could still use those statements in a future proceeding. If the child makes statements in the context of the evaluation that could allow for new charges to be brought, we could still file those new charges and use the statements by the child.

Our proposed amendment tries to address those concerns raised in *In re William M.* We start with the preexisting, pre-*William M.* statute. We then graft onto it language designed to ensure that any statements made by the child, for the purpose of rebutting the presumptive certification, may not be used against him in either juvenile or adult court.

We believe this language that we offer addresses the Supreme Court's concern because they were primarily concerned with admissions that had the potential to impose a deprivation of liberty at a future criminal or delinquency proceeding. By taking these statements out of any future proceeding, the concern of *In re William M.* is met. Additionally, the United States Supreme Court, in *Chavez v. Martinez* 538 U.S. 760 (2003), said the focus of the Fifth Amendment right arises not at the time the statement is made, for example, when the child makes the statement to a mental health professional at the certification hearing, but at the time the statement is used or attempted to

be used in court against the child. By keeping the focus on future proceedings, we believe we comply with U.S. Supreme Court precedent.

Additionally, in *In re William M.* itself, the American Civil Liberties Union (ACLU) and Juvenile Law Center filed an amicus brief where they held up, as an appropriate role model, the statutes of 12 different states. Those statutes are all related to the idea of insulating a juvenile from the use, in future proceedings, of his statements at a transfer hearing. Our language is derived from the statutes of those 12 states. The ACLU and the Juvenile Law Center, in their appendix, specifically referred the Nevada Supreme Court favorably to the statutes of Alabama, Georgia, Iowa, Louisiana, Maryland, Michigan, Mississippi, New Jersey, North Dakota, Tennessee, Virginia, and Wyoming. The language we offer you today is based upon a careful review of those statutes. We offer this as an attempt to meet the concerns of those who brought the issue to the attention of the Nevada Supreme Court in *Seven Minors.* We also offer the language as an attempt to comply with the U.S. Supreme Court precedent and meet the specific concerns about potential deprivation of liberty raised by the Nevada Supreme Court in *In re William M.*

Teresa Lowry, Assistant District Attorney, Family Support, Juvenile, and Child Welfare Division, Las Vegas, Nevada:

Certifications are an incredibly weighty and solemn process for prosecutors. We are tasked with balancing community safety, accountability, and rehabilitation, and we truly reserve this process of certification for the most serious offenders. It is important for us to share with you what this caseload consists of. In Clark County, over the past five years, we receive approximately 12,000 referrals from law enforcement each year. Those cases that qualify for the certification process are equal to less than 1 percent of what we do. The numbers reflect a very small, but significant, caseload of truly violent and dangerous juveniles, where we need to utilize the adult system to obtain significant sentences and maximum public safety.

We have kept detailed statistics on certifications for approximately the last five years in Clark County. Over the past five years, specific to just 14- and 15-year-olds, from 2004 to 2008, we averaged about nine a year. In discretionary certifications, over that five-year period, we averaged about six a year. There are circumstances and cases where the state, after we have seen the mental health and medical evaluations, social summaries, and all of the information that is obtained throughout the course of this process—and it is a lengthy and detailed process—has withdrawn their motion to certify if the mitigating circumstances outweigh the crimes that we have charged.

The age of 14 we have with us based on statute and case law. Presently, NRS 194.010 indicates that at 14-years-old, juveniles are presumed to understand the nature and consequences of their actions. Nationally, the minimum age for transfer into the adult system is 14-years-old and, in some cases, lower. If you look at all 50 states, you will see that the minimum age for transfer hovers around 14 years of age. Many states, including Oregon, which is special to us because it is a model Juvenile Detention Alternative Institute (JDAI) site, automatically exclude 10 to 20 of the top violent felonies from the juvenile court jurisdiction. In Nevada, we have continued to provide a process, a hearing, and take evidence in front of a judicial officer to determine whether or not a 14- or 15-year-old should go into the adult system. We, in Nevada, with our 14- and 15-year-olds, have continued to provide a judicial process rather than an automatic mandate into the adult system.

What I want to express to you is that certifications are the exception, and the cases that we do certify are serious.

Teresa Lowry:
A recent example of a 14-year-old who was certified under presumptive certification involved 23 counts of robbery with a firearm and first degree kidnapping, where the victims were senior citizens over 60 years of age.

Chairman Anderson:
The law change would apply there?

Teresa Lowry:
Under the proposed bill, those charges would not be certified under the adult system. We would lose the ability to certify those 23 counts, those 5 robberies, and those charges into the adult system.

Additionally, there are examples in the juvenile system where a repeat offender looks nothing like a repeat offender in the adult system. When talking about a habitual offender in the adult system, it is typically someone with two to three prior felony convictions. In the juvenile system, a habitual offender may have 10 to 20 prior petitions where they have engaged services in our system.

We have cases and examples of youths who have committed serious, violent felonies and gone to our youth programs. The juvenile system has tremendous limitations when it comes to dealing with serious, violent felonies. The terms of sentences in our programs are typically 6 months, 9 months, and 12 months. That is not a significant enough amount of time to deal with these serious, dangerous felonies. We have examples of youths who are 15 years of age who have come into our system, gone into our programs, been released within

six months, committed additional violent felonies, gone into the system again, and so on. In one specific example, a 15-year-old committed a home invasion with a firearm, battery resulting in substantial bodily harm, and attempted murder. This happened after the third time he was released.

Certainly, we are sympathetic and understand the concerns about youth in the adult prison system. Prosecutors welcome a discussion about other sentencing options: determinate sentencing and blended sentencing in the juvenile system. That is certainly a discussion we would welcome to give us options to deal with violent, dangerous youth in the juvenile justice system, so there is not a revolving door back into the community.

Clark County is open to a discussion about options in order to meet our obligation of community safety and to deal with this population of violent, dangerous youth.

Assemblyman Horne:
I have not heard one case presented today that cannot be used to certify with discretionary certification.

Sam Bateman:
I believe that the case that Ms. Lowry referred to is a 14-year-old who committed the first degree kidnapping and multiple series of armed robberies. Under the present proposal, I believe that we are seeking to change the age limit both in the discretionary certification and presumptive certification. Under that circumstance, with a 14-year-old, we would not have the opportunity to certify that individual to adult court.

Assemblyman Horne:
This is covering two parts. Ms. Lowry states that statutorily we provide for 14 years of age and we also provide that the age of majority is 16 years of age. Since I have been a member of this Committee, I do not remember a session where we have not received more data on the fact that youthful juveniles' brains are not developed enough or to such an extent that they understand the crimes and the ramifications of the crimes. The trend in courts, regarding certifying these juveniles for violent crimes, has shifted as well because of that new data coming in. While we have put it in statute as 14 years of age, we can also take it out of statute. Fourteen-years-old is a different age than 16-years-old is. We have heard today from those who actually work with these juvenile offenders on a day-to-day basis as a career. They bring a different perspective from those who prosecute them. I would be interested to see any evidence that moving this age from 14- to 16-years-old is going to be

problematic and put our community at risk. Mr. Bateman, you said that you have done only 10 of these cases, and that is not a huge number.

Sam Bateman:
I think Lieutenant Lew Roberts might be a good person to answer your question about the effect on the community of changing the age from 14- to 16-years-old.

Chairman Anderson:
For four years, I have sat on interim committees and heard juvenile issues. The only time we hear about blended sentencing from the prosecutors is when the other side of the issue comes up. They never bring it up in front of the Hardesty Commission. That was not one of the discussions that took place.

Kristin Erickson, representing Nevada District Attorneys Association, Reno, Nevada:
Dealing with children and whether to treat them as an adult or a juvenile is not an easy decision. It is important to keep in mind that the children of my youth were much different than they are today. Today's society is much more violent. When I went to school, I did not worry about guns, weapons, and drugs like the youth of today have to.

With me today is Washoe County Deputy District Attorney Shelly Scott. Ms. Scott is a prosecutor in our juvenile division, and she is here to give a brief statement.

Shelly Scott, Deputy District Attorney, Juvenile Division, Washoe County District Attorney, Reno, Nevada:
I would like to reiterate that what we are seeing in Washoe County is a rare occurrence when we seek to certify juveniles between the ages of 14 and 16. In fact, over the last five years, there have been only three occasions where the Washoe County District Attorney's Office has sought to bring 15-year-olds to certification.

The current law, as it does exist at 14-years-old and above, gives the court discretion to certify and consider the personal characteristics of each minor brought before it during a certification hearing. As Assemblyman Horne indicated, this Committee, as well as many others, has heard repeatedly about the adolescent brain and its functioning levels. Prior to certification hearings, we always request psychological evaluations to get functioning levels of our minors to assess their ability to understand the process and to get their developmental and reasoning capabilities. That is information presented to the court when the court makes its discretionary findings on whether or not it is

appropriate to certify a youth to the adult court. Given the research that goes into presenting evidence to the court, we have found the court exercises its discretion quite often.

Clark County has over 12,000 cases a year; however, we only see anywhere between 3,000 to 5,000 cases for review and issuing of delinquent charges. In the last five years, we have filed only 35 cases for certification. Of those 35 cases, only 3 are in the age bracket that we are discussing today.

Our only concern with removing the age limit of 14 is that we cannot capture them anywhere else unless it is a crime of murder or attempted murder. The automatic certification statutes begin at age 16. They all require prior felony convictions, and they require the use of a firearm or a violent sexual assault to remove them completely from the juvenile justice system. There is a category of youthful offenders who are violent and do fall in the age range of 14 to 16 years of age.

With the proposed change in this legislation, what we have available to us, in the form of any kind of protection to the community, is limited. One of our boot camps, China Springs, has recently withdrawn their agreement to handle many of the gang members that had been sent to them because it interrupted their rehabilitation milieu on the boot camp campus. In fact, they had rival gang members causing attacks on one another. We are left with only the juvenile correctional system to address those violent offenders, and as Ms. Lowry indicated, that correction time can be as short as 90 days. In no instance, as I recall, has it ever exceeded one year. Some of the damages inflicted on the victims and our communities by these youthful offenders are not addressed by these limited options.

Assemblyman Horne:
I do not think there is any debate about whether there are not violent, youthful offenders. What we are talking about here is the appropriate intervention for these youths. At what age is it appropriate to move them forward? Discretionary certification, with this bill, does not go away. It is still there for those youthful offenders that would recidivate. A judge does have that discretion to say, "Okay, we tried, but now I am going to certify you up." These presentations seem to assume that this Committee does not recognize that there are youthful, violent offenders out there. We know that. The debate is the age that is appropriate to intervene and put them into the adult system. When we show that there is recidivism there, appropriate measures can be taken at that time. Would you agree?

Shelly Scott:
I would agree with Assemblyman Horne that there is discretion, but that discretion only begins at age 16. This amendment not only changes the age of presumption for presumptive certification, but it also changes the age at which a youth may even fall under the discretionary statute for the court to consider. That is our primary concern. We are taking away, absolutely, those 14- and 15-year-old youths from ever being able to be presented to the court to make a determination on whether adult certification and punishment is appropriate.

Tom Roberts, Lieutenant, Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:
We signed in in opposition of this bill. It is a passionate piece of legislation for both sides. To give a public safety perspective, Lew Roberts is down south and has vast experience in juvenile gang investigations and may be able to bring some perspectives that we have not heard.

Lew Roberts, Lieutenant, Robbery/Homicide Bureau, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:
We are in opposition to this bill. Both sides have valid arguments and valid points. From the perspective of the Las Vegas Metropolitan Police Department (Metro), we are talking about those individuals who are 14 to 15 years of age who account for a large number of violent offenses against the community.

In 1995 when the age was lowered from 16-years-old to 14-years-old, it may have been in response to a rather burgeoning gang problem that we were starting to experience in Clark County and Washoe County. That has not changed much at all. We still have those same problems. From our perspective, especially as it relates to gang issues, there are a small number of individuals who commit those offenses. As Ms. Lowry stated, they only certified 10 individuals last year. That seems like a small number, which it is compared to the number of cases that they received. However, those 10 individuals account for a large number of crimes that are committed against the community. We have had individuals who have been arrested 15 to 30 times before they are certified.

We agree that there are some juveniles who require mental health services or counseling, and we are not saying they should be certified. We are saying that we want to be able to continue to certify those individuals who commit a large number of crimes that may elevate to a level of homicide.

Chairman Anderson:
I think you are in a place to have a perspective on this that my experience does not open me to. As a result of the legislation passed in 1995, are you seeing an

increase of those less than 14 years of age who are participating in gangs, or is it still the same age group?

Lew Roberts:
In 1995, I was assigned to the gang unit at Metro. What we were seeing at that time was a huge increase in the number of violent crimes committed by gang members, including a number of homicides. In relating 1995 to today, the main issue is that many gangs and older gang members still use juveniles to commit serious offenses. Those offenses are wide-ranging. An example would be if a juvenile commits a drive-by shooting, that juvenile is not going to face the same punishment as an adult. That has not changed at all. Sometimes, these offenses are being directed by those who understand that the juvenile justice system is not suited to mete out as severe a punishment as it would for them as adults. I am not saying that is always the case but rather that it does happen, and that is at the core of the issue we are talking about.

Assemblywoman Dondero Loop:
Is this having the opposite effect? Do the older gang members not care how young the juveniles are? I feel like we are doing what is right for the juvenile, but because we keep going down in age, the older members of the gangs keep going down in age. Am I misunderstanding that?

Lew Roberts:
I am not quite sure what you are asking. Are you asking if we are doing right by the juvenile in comparison to the adult?

Assemblywoman Dondero Loop:
To clarify, I feel like these older gang members are coercing these minors to do things. Are they seeking out younger children if we leave the current law at 14-years-old?

Lew Roberts:
In some cases, yes they are. In general, when we are talking about the youthful offenders, they have already been engaged in a frequent pattern of violent behavior as part of a gang or prior to coming into a gang. Yes, there are times that older gang members do exploit younger children to commit crimes. When we speak of that small number of 10, those individuals were already headed down the road to criminal activity and violent behavior when they joined the gang. It becomes part of the criminal cycle. The older gang members are not stupid and know that if they get a juvenile to commit certain offenses, the punishment will not be as severe. An example would be if someone got a juvenile to rob a bank with a firearm. Since it was a juvenile who committed the crime, how do we address the robbing of a bank in the federal system? It is

a double-edged sword. I do not think that we are talking about juveniles as a whole. The juvenile justice system does a good job of reaching out to those juveniles who need counseling and help. In most cases, they are able to save those individuals. We are talking about that small number who have issues, have not benefitted from those programs, and have become habitual, and often times violent, offenders.

Assemblywoman Dondero Loop:
Does this bill keep in place the ability to certify those 14-year-olds or younger?

Lew Roberts:
I believe this bill raises the age on both the presumptive and discretionary certifications to 16-years-old, which would not allow us to do that.

Ronald Dreher, Government Affairs Director, Peace Officers Research Association of Nevada, Reno, Nevada:
I am here today in opposition to A.B. 237. I am here to tell you that I have spent the last 30-plus years of my career seeing these juveniles in prison yards. As you heard, there are systems in place that define and take into consideration the actions of those juveniles in order to make sure that only the worst of the worst offenders get to the adult prison yards.

We have spent much time educating juveniles. Unfortunately, we start teaching the children in school that they have rights. Our career crooks know that these children have rights, and they use those rights when they use these children as the principals in committing violent crimes. We need to keep the language that we have in the current law. We need to keep the certification process. We work with Judge Janet Berry in Reno. She puts on this group called Three Little Pigs for fifth graders, and she uses that story to explain the court system. Following that, she brings in severe, career criminals to talk to these children. We start early in trying to educate children, but there are those few who do not care. Sometimes they are used by adults. We spend time telling children what will happen if they commit crimes. Children are around many violent activities, for example, video games, television, and movies.

The point of keeping the law the way it is: the voices of the victims need to be heard. These victims can tell you the horrendous crimes children are capable of. I would ask that you oppose this bill and keep current the 14- to 16-year-old in statute.

Chairman Anderson:
Of course, your example would be excluded. Do you realize that?

Ronald Dreher:
I do.

Chairman Anderson:
I do not want you to think that I was not being mindful of that question. We are still getting the criminals off the streets.

I think that it is a misrepresentation to think that criminals are dumb and unknowledgeable about the law. In fact, they are often very knowledgeable about the law.

Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:
I signed in as neutral on this bill because I think our position on presumptive certification extends the spectrum that you have before you. We oppose presumptive certification. The reason we oppose it is our discretionary certification statute here in Nevada is incredibly broad and allows for certification in any felony circumstance. The bill proposes moving that age up to 16 years old, and we do support that. We think that parts of this bill are better than others.

The bottom line from our point of view is as follows: we were requested by the Supreme Court to brief the constitutional issues that were involved in the *In re William M.* case. Kristina Wildeveld, an attorney in Las Vegas, was the direct representative of the two individuals in that case. We were asked to give the court information on the constitutional issues, and they did end up ruling in favor of the arguments that we made. We are near and dear to this issue, and we see our role here at the Legislature as being one of a bulwark against laws that we think are unconstitutional.

I did not sign in opposing this bill because we thank the sponsor for fixing the constitutional issues that were present in the presumptive certification law. We do believe this current version fixes those problems, so we commend you for taking that step. What prevents me from supporting the bill is the fact that we believe, due to the low numbers of extreme criminality, it is appropriate to rely on the discretionary standard, which is wider than any other state's. It allows certification in any felony crime. As you have heard, the serious crimes of murder, attempted murder, sexual assault, and attempted sexual assault go automatically to the adult court regardless of the age of the perpetrator. Nevada already has a broad statute that brings children into the adult system.

We believe that it is inhumane to treat 14- and 15-year-olds as though they belong in an adult jail. That is not because the criminality does not warrant it

but because, mentally and physically, they are simply not developed. We believe this presents issues for the child, who could benefit from early intervention and in some ways may also be a victim. The child may be manipulated by older members of a gang, or the like, and we believe these are the children that need to be targeted with early intervention if we want to reduce the criminality in the future.

Kristina Wildeveld, Defense Attorney, Las Vegas, Nevada:
I was not planning on speaking today, nor was I prepared to speak today. However, it is hard to sit silent. I would also find it hard to sit as a neutral body. I am the only attorney in the room who represents the children in juvenile court and adult court. The children that I represent in juvenile court who are certified-up get one of two sentences: they are either sentenced to a life in prison or they are given probation; neither one of those things addresses the issues that brought the child before the juvenile court in the first place. Oftentimes, these children who are certified-up have mental health issues, substance abuse issues, have been raised in a bad home, and never had parental support or anyone who has cared about them.

The juvenile court has jurisdiction over these children until they are 21 years of age. Let us start using that and put more services into the juvenile system so that the juvenile court can use its jurisdiction until they are 21 years old. They should have the chance to rehabilitate these children rather than sentence them to a life in prison. We can try to reduce the recidivism rate by changing the age from 14- to 16-years-old and keeping some of these 14- to 15-year-olds out of the adult system, so by 16-years-old, they never come before the court again. Instead, we need to address their issues while they are younger, give them the services they need, and teach them to respect themselves and others. They cannot learn to respect others until they have learned to respect themselves.

These children are not reading law books or hearing what is going on in legislative rooms. They have no idea what the law is or what they are facing until they come before the court and meet their defense attorney for the first time.

Chairman Anderson:
Did you have the opportunity to review the proposed amendment that came from the DA? They have proposed a few language changes that relate to the certification question, which was the heart of the decision before the Supreme Court.

Kristina Wildeveld:
I did read the proposed changes as they relate to the age change from 14- to 16-years-old and how they comply with the Supreme Court ruling decided November 26, 2008, in the case of *In re William M*.

I am also a member of the Governor's Juvenile Justice Commission, but I am speaking today as a defense attorney who represents children in adult and juvenile court.

Lee Rowland:
To clarify my earlier testimony, there is no age range for automatic certification for murder or attempted murder. However, the sexual assault provision for automatic certification is limited for 16 years of age or above.

Mike Pomi:
For clarification, the juvenile justice administrators across the state can clearly handle the population of 13 children to go to Summit View. It is built in a correctional setting in Clark County, and it is capable of handling that level of offender.

We have talked about blended sentencing, and we have a case in Washoe County, similar to that, where a young man shot a person and was put into the adult system. He was sentenced as a blend, but he is going to Summit View. Out there, the adult system will review his case. In the most horrific of cases, our DA has made motions and agreements to treat children in the juvenile setting, and that is what you pay us to do. Our job is to work with children in that age group, and we can successfully do that.

Scott Shick:
China Springs still accepts children with gang behavior. I do work out there, and we are looking at cases for serious, embedded gang membership or repetitive, gang membership that deteriorates the population once they arrive. We are doing a more formal increased review of children coming into the camp, but they are still being accepted.

Assemblyman Carpenter:
How does a child get into a facility like Summit View? What kind of crime do they have to commit, and what happens after they are in that facility? Please give me an example of how they would be able to be rehabilitated.

Mike Pomi:
There is a tiered approach for classification of youth in our state. We use youth camps for a lower-leveled offender starting within the system. These camps are

Spring Mountain in Clark County and Aurora Pines and China Springs for northern Nevada youth. We use Caliente and Elko for a state commitment from the Division of Child and Family Services (DCFS). We keep jurisdiction of the children in Spring Mountain and Aurora Pines. Once they go to Caliente or Summit View, which are DCFS state-run institutions, the Parole Department takes jurisdiction of supervision of those children. The court's process is to review the sophistication of the children coming before them in a due process hearing. This is where the state, public defender, probation department, parents, and judge ultimately determine the child's level of sophistication. The DCFS categorizes the children and classifies them in a 30-day review, as they sit in a detention center, to decide where they will go. That is a function designated to the State of Nevada through DCFS and their corrective department, under Fernando Serrano, who is the Deputy Administrator.

Assemblyman Carpenter:
I know about Elko and Caliente, but could you tell me about Summit View?

Mike Pomi:
The setting at Summit View is a prison setting. There is no open camp. There are chain-link fences and wire, dorms, a gymnasium, and a long hallway of locked facilities similar to any prison setting. The physical design is that. The programming elements within it are strong on education. We try to strengthen the youth by education. The second part is the criminality, and we address that. Currently, the state is using a program called Thinking for a Change. This program looks at the cognitive restructuring of the youths' thinking about their criminal behavior. We utilize it in Washoe, Aurora Pines, and China Springs. Spring Mountain does a different form of cognitive behavioral restructuring. They are now trying to implement it in the state system. The children identify their criminality and work on that cognitively, and that will be part of the program. We look at the behavioral issues that brought them into the system. That is how we address it in the juvenile justice system. That is what Summit View does. They have a corrective action plan for the children to work towards recognizing their criminal-thinking errors and changing and restructuring that thinking in a positive, pro-social way.

Assemblyman Carpenter:
How long can they stay there?

Mike Pomi:
It is based on their treatment plan and the identified behaviors they are to address. If they address them successfully, it could be 6, 9, or 12 months and up to two years. There is no determinate sentencing where the court requires a set amount of time. It is based on the children's behavioral change, and once

that has been evaluated, they are released under the custody of parole if they meet the criteria of their treatment plan.

Assemblyman Carpenter:
What if they do not meet the criteria? What happens then? Where would they go after two years?

Mike Pomi:
There is an aging-out process. Generally, there would be a review process before the court to say that the child was unsuccessful in his commitment and he will need to be reviewed for further incarceration. I cannot remember a case where that happened at Summit View. This happens more at the youth camps. We have to reevaluate children and put them into a higher level of state care. I do not recall a situation where we have taken a youth out of the corrective setting, like Summit View, and escalated them into the adult system for noncompliance. We generally give them an opportunity for supervision because there is, in all cases, some movement towards rehabilitation.

Chairman Anderson:
I will close the hearing on A.B. 237, and we will move into a modified work session.

The first bill is one that we heard today, and it seemed like we could take action on Assembly Bill 322.

Assembly Bill 322: Makes various changes concerning conduct related to racketeering. (BDR 15-1000)

Ms. Chisel, did you identify anything that we need to clarify other than the four- or five-year question?

Jennifer Chisel, Committee Policy Analyst:
No.

Chairman Anderson:
The Chair will entertain a motion.

> ASSEMBLYMAN CARPENTER MOVED TO DO PASS ASSEMBLY BILL 322.
>
> ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:
The next bill we will move to is Assembly Bill 182, which we heard on Thursday, March 5, 2009.

Assembly Bill 182: Makes various changes concerning crimes involving explosives. (BDR 15-195)

Jennifer Chisel, Committee Policy Analyst:
The Committee should be getting a short description of the bill (Exhibit G). Assembly Bill 182 was brought by Assemblyman Oceguera with the intent to consolidate and combine similar provisions related to explosives. The bill expands the definition of "explosive" for purposes of *Nevada Revised Statutes* (NRS) 202.750 through 202.840, which addresses crimes related to explosives. The expanded definition includes explosive materials, as defined by federal law, which is consistent with the definition of explosive that is in current statute at NRS 476.005. The bill also repeals four sections of NRS for purposes of consolidation. *Nevada Revised Statutes* (NRS) 202.270 is one of the sections to be repealed, which is combined into NRS 202.830 in section 2 of the bill, and NRS 202.810 and 476.020 are also proposed to be repealed because the crimes in those sections can already be prosecuted under NRS 202.262. Finally, NRS 476.050 is another section proposed to be repealed, which can be prosecuted under NRS 202.830.

Chairman Anderson:
There appears to be no need for an amendment.

Some of us were concerned about NRS 202.810, but since it is already covered in statute, we are okay.

Assemblywoman Parnell:
I want to confirm that this bill does not add anything to the list since "explosive material" is already included in the federal list. Is that correct?

Jennifer Chisel:
Yes, that is correct.

Chairman Anderson:
The Chair will entertain a motion.

> ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS ASSEMBLY BILL 182.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:
We will move to Assembly Bill 45. This is a larger issue that deals with the State Public Defender. This would move the financial burden to the state. If we move this bill along, we need to move it to the Assembly Committee on Ways and Means. Even though it may seem that it would not need to go to Ways and Means, in order to process the bill, it should go there, and this bill actually came from the Assembly Committee on Government Affairs. We asked for it to make sure that an adequate defense was provided.

Assembly Bill 45: Requires the State Public Defender to provide defense services to indigent persons in counties without county public defender offices and to fully fund such services. (BDR 20-457)

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 45 was brought by the Nevada Association of Counties. This bill is a result of findings and recommendations made by the Nevada Supreme Court's Indigent Defense Commission. Assembly Bill 45 provides each county in Nevada with the option to create a county public defender's office or to use the services of the State Public Defender. The bill requires the state to reimburse the counties with the cost of providing indigent defense services and to fully fund the operations of the State Public Defender.

There were no amendments proposed for this bill.

Chairman Anderson:
The intent of the Chair would be to accept a motion of do pass and rerefer to Ways and Means.

Assemblyman Horne:
I am going to be opposed to this. We can send it to Ways and Means, but I am in opposition. Basically, the counties are saying that they do not have to pay but the state should. I think that we have working systems now, and this bill would fundamentally change that. I am going to be a no vote.

Assemblyman Segerblom:
My concern is that, currently, the two largest counties, Clark County and Washoe County, must have a public defender's office, which they have and they perform well. This would allow them to turn those services over to the state. Based upon their representation that they will not change, I would vote for the bill, but I am concerned because those two offices work well, and we should not tamper with them.

Assemblyman Carpenter:
I have had some experience as county commissioner. I think this is one area that the counties handle well and should continue to handle because the state cannot provide the services, and it is best left with the counties. I will vote against it.

Assemblywoman Parnell:
I would not support the motion as you suggested. I would be willing to rerefer without recommendation by the Committee.

Chairman Anderson:
I understand. I am happy to put it back on the board. However, I do not want us to send the impression that we are not concerned about adequate defense, because we are. The state public defenders do a good job, and I do not take this as a criticism of the job that is currently being performed in either of the two major counties. I know that there is concern. The courts are still looking at the adequacy of defense in some of the smaller counties and their ability to provide adequate indigent defense, given the cost and the underfunded nature of the State Pubic Defender's Office. To me, it seems that it would be appropriate for us to move this to Ways and Means because I think this is a function of money and not of the concept of an adequate defense. It is what we consider to be a fundamental right, and it has been reaffirmed by a long list of court cases that set this precedent.

We have two choices. We can move this bill out of Committee to Ways and Means and have them address these questions, or we can leave it here.

Assemblyman Horne:
I would be willing to move it to Ways and Means if we did it the way Assemblywoman Parnell suggested, without recommendation.

Chairman Anderson:
The Chair will accept a motion of rerefer to Assembly Committee on Ways and Means without recommendation.

Assemblyman Carpenter is of the opinion that we should not move this bill to Ways and Means and hold it here.

Because of the lack of a motion, we will put A.B. 45 back on the board. We thank you, Ms. Chisel, for preparing the document (Exhibit H).

Meeting adjourned [at 11:37 a.m.].

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 20, 2009 Time of Meeting: 8:11 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Rosters
A.B. 264	C	Elizabeth Neighbors	Written testimony.
A.B. 264	D	Elizabeth Neighbors	Proposed amendments.
A.B. 322	E	Elisabeth Shurtleff	Written testimony.
A.B. 237	F	Sam Bateman	Proposed amendments.
A.B. 182	G	Jennifer Chisel	Work session document.
A.B. 45	H	Jennifer Chisel	Work session document.