MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
April 9, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 10:10 a.m. on Saturday, April 9, 2011, 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/76th2011/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 William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Lucy Flores, Clark County Assembly District No. 28
Assemblyman John C. Ellison, Assembly District No. 33

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jeffrey Eck, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Danielle Barraza, Intern for Chairman Horne
Sam Bateman, Deputy District Attorney, Office of the District Attorney, Clark County
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Chuck Callaway, Director, Intergovernmental Services, Las Vegas Metropolitan Police Department
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General; Executive Director, Advisory Council for Prosecuting Attorneys, Reno, Nevada
Gail Curtis, Deputy Public Defender, Juvenile Division, Office of the Clark County Public Defender
Esther Rodriguez Brown, Executive Director, The Embracing Project, Las Vegas, Nevada
Richard Boulware, Vice President, National Association for the Advancement of Colored People, Las Vegas, Nevada
Michael Lawson, Private Citizen, Las Vegas, Nevada
Tierra D. Jones, representing the Office of the Public Defender, Clark County
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Elana Graham, Director, Intergovernmental Relations, Eighth Judicial District Court
Diane M. Machen, Criminalist, Forensic Science Division, Washoe County Sheriff's Office
Richard Perkins, representing Wynn Las Vegas
Scott Anderson, Deputy Secretary of State for Commercial Recordings, Office of the Secretary of State

Nicole Lamboley, Chief Deputy Secretary of State, Office of the Secretary of State
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety

Chairman Horne:
[Roll was called. Assemblymen Segerblom and Brooks were present via videoconference from the Grant Sawyer Office Building.]

Good morning, ladies and gentlemen. Welcome to our first and hopefully only Saturday hearing in this Committee. We have four bills on the agenda and a short work session. We will go in order and start with Assembly Bill 269, which is my bill. Mr. Vice Chairman will conduct that hearing.

[Vice Chairman Ohrenschall assumed the Chair.]

Vice Chairman Ohrenschall:
I will open the hearing on Assembly Bill 269.

Assembly Bill 269: Revises certain provisions relating to the use of a grand jury. (BDR 14-1127)

Good morning, Mr. Chairman. Good morning, Ms. Barraza. Thank you very much for presenting A.B. 269 today.

Assemblyman William Horne, Clark County Assembly District No. 34:
Good morning, Mr. Vice Chairman. Before you this morning is A.B. 269, which revises certain provisions concerning grand juries. If it pleases the Vice Chairman, I will have my Committee intern, Ms. Barraza, first do her presentation on the bill, and then I will make remarks.

Vice Chairman Ohrenschall:
That will be fine. Ms. Barraza did such an outstanding job on the civil commitment bill about a month or so ago. I think we are all looking forward to her presenting this bill as well. Please proceed, Ms. Barraza.

Danielle Barraza, Intern for Chairman Horne:
Thank you, Mr. Vice Chairman. Assembly Bill 269, which is before you, is actually the same bill as Assembly Bill No. 364 of the 74th Session. I just found out that with A.B. 269, we meant to put in the amended version, which should be on the Nevada Electronic Legislative Information System (NELIS) by now. The amended version reads that the grand jury is not bound to hear evidence for the defendant, except that the defendant is entitled to submit a

statement which the grand jury must receive, providing whether a preliminary hearing was held concerning the matter, and if so, that the evidence presented was considered insufficient to warrant holding the defendant for trial. That is the amended version that we are presenting.

I would like to present some reasons why this bill was brought up in the first place and why it would be good. Following that, the Chairman is going to provide additional information coming from his experience as an attorney.

Assembly Bill No. 364 of the 74th Session was passed in both houses, and subsequently vetoed. Generally speaking, gross misdemeanors and felony cases have to go to a district court. One path that the district attorneys can take is to seek a preliminary hearing, during which they might present enough evidence to meet the burden of getting the case to a district court. They only need slight or marginal evidence, and district attorneys rarely present any evidence at all because the bar is so low for the prosecutors. Approximately 98 percent of cases heard in preliminary hearings are bound up, and they go out to district courts. This is the quickest and most common route taken. The other option the district attorneys have is to go straight to the grand jury in certain cases, and the grand jury is designed to determine whether the state has sufficient evidence to press criminal charges. This process is a bit lengthier, so it is usually reserved for high-profile cases or other cases of serious matter.

This bill is being presented on behalf of those 2 percent of cases which were dismissed. In the preliminary hearing, the district attorneys issue what are called Marcum notices, which send cases to a grand jury, even though they were dismissed in the preliminary hearing. This process is, in essence, like forum shopping. Current laws allow district attorneys to pick a new venue if their first option does not pan out.

It is also a problem because defense attorneys are not allowed to attend grand jury proceedings. Even after a defendant goes to a preliminary hearing and wins his case by dismissal, he may, at his own detriment, represent himself at a grand jury hearing. The Chairman does not see that as fair practice. In addition, grand jurors currently have no way of knowing that evidence presented in a preliminary hearing was dismissed. Their opinions might be changed if they had knowledge that a neutral and learned judge had previously found that there was not enough evidence to merit a trial. So, they could be more easily persuaded.

Vice Chairman Ohrenschall:
Pardon me, Ms. Barraza. Do you think it might be more cost-effective and save judicial, prosecutorial, and defense resources if someone who has already had

the charges against him dismissed by a magistrate has this rehashed by a grand jury? Do you think that will lead to a cost savings for the judiciary, prosecution, and criminal defense attorneys all around?

Danielle Barraza:
I was just about to get to that. Yes, I do believe that. The court system is already severely overburdened, and this pretty much doubles the time and resources involved, further causing more problems and more cases. I will now turn it over to the Chairman.

Vice Chairman Ohrenschall:
Thank you very much. Are there any questions for Ms. Barraza? I do not see any. Mr. Chairman, please continue.

Assemblyman Horne:
Thank you. I will just try to "tie a bow on it." Initially, when I brought the bill in 2007, approximately 98 percent of the cases in prelim, when a district attorney is seeking to bind a case up to district court, were successful. Those are the rare times in which the judge finds that there was insufficient evidence to bind a matter to district court. Every time this has happened to me at prelims in which I have been successful, the district attorney walks over to me and hands me a Marcum notice. He already has it filled out and ready to go. He lets me know that he is going to go to the grand jury. At the grand jury, he presents the same evidence and gets an indictment. The initial bill sought that if he did not bring any new and substantial evidence to the grand jury, then that was unfair because in one instance, he had the "bite of the apple" at the preliminary hearing before a judge. The judge sits on the bench and says, "You have not met your burden," which, by the way, was slight or marginal evidence. It is so slight and marginal that I have never seen a defense attorney at a preliminary hearing actually present evidence because the burden is so low.

It is a fact-finding endeavor for the defense to make a clean record for when the case gets bound up to district court. However, the judge told him he has not met that slight or marginal evidence. So, he goes to the grand jury, and the grand jury has no knowledge that it had been in a prelim, that a judge has heard this very evidence and found that it is not sufficient, and it gets bound up. This does not take that arrow out of the district attorney's quiver. The initial bill said that if you are going to go that route, at the very least you have to bring new evidence to the grand jury.

But, in 2007, we came to an agreement with the district attorneys. The representative at that time was Ben Graham. That bill is on NELIS, the agreement that we came to in 2007. It basically says that, if the district

attorney goes to the prelim and is unsuccessful and presents a Marcum notice and then goes to the grand jury, the defendant is entitled to give a written statement to the grand jury, advising them that the evidence presented at the preliminary hearing was insufficient. That is the bill before you. It is Assembly Bill No. 364 of the 74th Session. That is the bill that I proposed this Committee process and send to the Assembly floor. As Ms. Barraza stated, it passed our house with bipartisan support, and out of the Senate. Governor Gibbons vetoed the bill. That veto was overridden in our Assembly with bipartisan support, but fell short in the Senate. I have had discussions with the district attorneys this session. I have spoken with Sam Bateman and Kristin Erickson. I believe Mr. Bateman will say they are okay with this bill. I am more than happy to answer any questions.

Vice Chairman Ohrenschall:
Mr. Chairman, I do remember this bill. I remember I supported it. I thought it would lead to more conservation of our judicial resources. I, too, was surprised when the former governor vetoed it after you worked so hard to get consensus and support for it. I have a question from Assemblyman Frierson.

Assemblyman Frierson:
Thank you, Mr. Vice Chairman. Those of us in criminal practice know that you can "indict a ham sandwich." Could you, Mr. Chairman, explain how a grand jury proceeding is different from a preliminary hearing, as far as the presentation and the opportunity to ask questions and the secret nature of the grand jury versus the preliminary hearing?

Assemblyman Horne:
Thank you, Mr. Frierson. A grand jury proceeding is the district attorney's show. It is not a venue where, like in other courts, there is a defense attorney. It is not an adversarial climate. The district attorney presents evidence by way of documents and/or witnesses to the grand jury. The district attorney gets to ask the various questions that he wants to ask to get that witness to tell his story, to convey what he has seen, and whether it would meet the elements of a crime. The grand jurors are also permitted to ask questions as well for clarification to testimony that the witness has given. But outside that, there is not a defense attorney present to cross-examine those witnesses and to bring to light some of the flaws that may be in their testimony or in their theory, et cetera. It is solely the district attorney's show in that regard. It is a one-sided arena in which the grand jury relies solely upon the evidence presented by one side of the case.

Vice Chairman Ohrenschall:
I have a question from Assemblyman Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Vice Chairman, and good morning, Mr. Chairman. Thank you for bringing this bill. Which bill is it? Is it the bill where you say you can empanel a grand jury and take a "second bite of the apple," with a notification that says a judge dismissed the case the first time? Is that the bill we are talking about?

Assemblyman Horne:
That is correct, with the amendment that should be up on NELIS. So, the language you see on there is from Assembly Bill No. 364 of the 74th Session. I am proposing that we pass that language.

Assemblyman Sherwood:
That makes a lot more sense than saying, "If the judge dismisses it, you do not get a crack at a grand jury." That will not save any money. The unintended consequence of that will be that the district attorneys will, from the beginning, say, "Let's empanel a grand jury for everything." That is more expensive and time-consuming.

I like the language that says they can still do the Marcum notice with the proviso that the defense gets to say a judge looked at the case. If that is the bill we are talking about, it seems to make sense, but if we go with the unamended version, be careful what you ask for. As a district attorney, I could threaten to empanel grand juries every time. You talk about a court system run amok. There are expenses and other things to consider as well. On top of it, the defense attorney is not allowed to participate. I like the amended version of this. Thank you.

Vice Chairman Ohrenschall:
Thank you very much, Mr. Sherwood. Assemblyman Hansen.

Assemblyman Hansen:
Thank you, Mr. Vice Chairman. Chairman Horne, did you say 98 percent of the people who are brought before these grand jury panels end up being indicted?

Assemblyman Horne:
In the preliminary hearing.

Assemblyman Hansen:
Is that because the district attorneys are doing a really good job in weeding out the weak cases and bringing only the best people, or is that because the bar is

set so ridiculously low that virtually everybody brought before a grand jury gets indicted?

Assemblyman Horne:
The bar is fairly low. It requires "slight or marginal" evidence. As you know, to be found guilty, there must be no reasonable doubt. With "slight or marginal evidence," the judge is basically saying that, "I have heard enough here today to say that it can go to the district court, and you can present your case there to try to convince a jury that this person, in fact, did what you are saying he did. I have just enough evidence to say he was there, and he did something. I am not saying that you have met the elements for a conviction, but we have something here. You did not just grab someone completely out of the blue."

A win at a preliminary hearing for the district attorney's office does not equate to a conviction at district court, but it takes it to that next level where the parties start preparing for a trial. There is a preliminary hearing where it gets bound up to district court. There is then an arraignment, at which the defendant is arraigned for what the judge at the preliminary hearing found. If there was a showing of probable cause, it would be bound to district court, and then it gets set for a trial date. There will be a speedy trial unless the defendant waives his speedy trial rights. At that preliminary stage, the bar is so low. The judge does not need a whole lot to bind it up. That is why I thought it was unfair to take that exact same evidence to a grand jury. At the prelim, the defense attorney is able to cross examine a witness that the district attorney puts up. But at the grand jury, that district attorney puts up that same witness and asks the same questions, but that cross-examination does not occur. The grand jury panel does not get to hear that part.

Assemblyman Hansen:
The concern of the bill really is he has already had his first shot with the judge, and the judge essentially says you have not met this bar. The prosecution then bypasses that and brings it to the grand jury, despite the fact that the judge has already said the standard has not been met. Is that what we are getting at?

Assemblyman Horne:
Yes. The amended version of the bill, which I suggest the Committee consider, allows the grand jury to know that he has already brought this matter before a judge.

Assemblyman Hansen:
Okay, so what this bill is trying to do, then, is to simply allow the defense an opportunity to say, "Look, this was already heard by a judge. The judge felt there was insufficient evidence." Is this just to let the jury know that?

Assemblyman Horne:
It is to allow the defendant to issue a written statement, stating as much. There will not be a defense attorney in the grand jury proceeding to make arguments or anything like that. That is not permitted in a grand jury proceeding. I should make it clear that defendants are permitted to participate in a grand jury and be witnesses. However, I do not know of a defense attorney that would allow his client to do that without his counsel present.

Assemblyman Hansen:
Thank you very much.

Vice Chairman Ohrenschall:
Assemblyman Frierson.

Assemblyman Frierson:
Thank you, Mr. Vice Chairman. Assemblyman Horne, I would like to follow up on the question about how frequently cases get bound up. From what I recall, and I want to know whether this is your experience, too, the only cases at prelim that do not get bound up are cases where, surprisingly, a witness does not show up, or in the unusual circumstance where a witness changes his story. Otherwise, it gets bound up. In your experience, is it the rare circumstance that causes it not to get bound up at prelim simply a witness not showing up?

Assemblyman Horne:
Yes, that is one instance where the prosecution has failed to put on a substantial witness. They are counting on a certain witness to either appear and he did not, or they were counting on certain testimony from that witness which did not pan out. Those are the typical ones that do not get bound up. Yes, I have seen where a continuance is granted because a witness does not show up. And then you come again, and the witness still does not show up. I have had it where the witness does not show, and the prosecution has to put on other witnesses such as the police officer, et cetera, but it does not meet the burden, and so the district attorney issues a Marcum notice.

Vice Chairman Ohrenschall:
Thank you very much. Are there any other questions from the Committee? Are there any questions from Assemblymen Segerblom or Brooks in Las Vegas?

Assemblyman Segerblom:
We have no questions.

Vice Chairman Ohrenschall:
Mr. Chairman, are there any other witnesses you would like to have come forward in support of the bill?

Assemblyman Horne:
Mr. Bateman is here.

Vice Chairman Ohrenschall:
Good morning, Mr. Bateman.

Sam Bateman, Deputy District Attorney, Office of the District Attorney, Clark County:
We support the amended version that is on NELIS. I think that that is a reasonable accommodation to the concerns that Chairman Horne had, and we would support that going forward.

Vice Chairman Ohrenschall:
I am not seeing any questions. Are there any questions in Las Vegas for Mr. Bateman? I do not see any. Thank you very much, Mr. Bateman. Is there anyone else who wishes to speak in support of A.B. 269? Good morning, Ms. Gasca.

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:
Good morning, Mr. Vice Chairman and members of the Committee. The American Civil Liberties Union (ACLU) is in full support of this bill. We love to agree with the district attorney on things.

Vice Chairman Ohrenschall:
Thank you very much. Are there any questions for Ms. Gasca either in Carson City or in Las Vegas? I do not see any. Does anyone else wish to speak in support of the bill? Is there anyone neutral to the bill? Please come forward.

Chuck Callaway, Director, Intergovernmental Services, Las Vegas Metropolitan Police Department:
I want to clarify for the record that I signed in opposed to this bill, based on a conversation I had had with Mr. Bateman and Ms. Erickson. But, because they are okay with the amendment, I want the record to reflect that we are also good with the amendments.

Vice Chairman Ohrenschall:
Thank you very much. Are there any questions for Officer Callaway? I do not see any. Thank you for your testimony. Mr. Kandt, please begin.

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General; Executive Director, Advisory Council for Prosecuting Attorneys, Reno, Nevada:
I had signed in on behalf of the Council in opposition to the original bill, and I want to clarify for the record that we withdraw our opposition on the basis of this amendment. I also want to comment in response to some of the statements that Assemblyman Hansen made, or questions he had regarding the ethical constraints upon the prosecutor in bringing charges and exercising charging discretion. Rule of Professional Responsibility 3.8A requires that a prosecutor refrain from prosecuting a charge not supported by probable cause, and there are national standards that establish that a prosecution should only proceed on the basis of sufficient admissible evidence to support a conviction. Thank you.

Vice Chairman Ohrenschall:
Thank you very much, Mr. Kandt. Are there any questions for Mr. Kandt? Assemblyman Sherwood.

Assemblyman Sherwood:
Mr. Kandt, thank you. What is the difference in time and cost, more or less, between a grand jury and simply taking the case to a judge?

Brett Kandt:
Assemblyman, I would have to defer to the district attorneys in terms of that data. I do not have that data for you.

Assemblyman Sherwood:
It is a leading question, right? Just confirm my hunch that a grand jury is way more involved and a lot more work than going to a judge. Or is it kind of the same process?

Brett Kandt:
I believe you are correct, but, once again, I would defer in terms of hard data to the district attorneys.

Assemblyman Sherwood:
Just for the record, as we look back, the original intent of the bill was not to have the Marcum notice. We will all be gone because of term limits at some point, and I just want to make sure that you would be opposed to it, if not for the amendment, because you would have to handle grand juries every time. What would be your opposition? Why were you opposed to it without the amendment?

Brett Kandt:
The bill in its original form would preclude the opportunity for the prosecutor to seek an indictment through the grand jury should, as was detailed, an important key witness fail to appear at the preliminary hearing or change his testimony at the preliminary hearing. We believe justice is served by allowing, in those instances, for the opportunity to take it to a grand jury.

Vice Chairman Ohrenschall:
Are there any other questions for Mr. Kandt either in Las Vegas or Carson City? I do not see any. Thank you, Mr. Kandt. Is anyone else speaking neutral on the bill? Is there anyone opposed to the bill? Mr. Frierson.

Assemblyman Frierson:
There being no opposition, and this having passed both houses last session, if the Vice Chairman would entertain it, and in the interest of the significant work session that we have for the rest of the week, I would certainly make a motion to amend and do pass.

Vice Chairman Ohrenschall:
And I would certainly like to accept that motion should it please the Chairman.

> ASSEMBLYMAN FRIERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 269.
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

[Chairman Horne reassumed the Chair.]

Chairman Horne:
Thank you, Mr. Ohrenschall. I thank the Committee for processing A.B. 269. The next bill is Assembly Bill 272. I will open the hearing.

Assembly Bill 272: Makes various changes relating to juvenile justice. (BDR 5-1032)

Assemblywoman Lucy Flores, Clark County Assembly District No. 28:
I am here to present A.B. 272. I think we might have been able to get a report from the Department of Justice (Exhibit C) up on the NELIS. That is primarily what I will be using to provide information for my testimony today. If it is not up there, I will certainly make sure that you have it soon.

Assembly Bill 272 does three things:

- Changes discretionary certification of 16-year-olds and older.
- Puts murder and attempted murder under the juvenile courts' jurisdiction.
- Keeps all juveniles housed in juvenile detention during pendency of the court proceeding, unless the court determines, after the hearing, that the juvenile poses a safety concern.

I have talked to some folks in opposition to the bill, and there are some practical concerns in terms of what this bill would do. However, I would urge the Committee to consider the important policy implications of what the bill would accomplish if passed.

It is not necessarily the easiest thing to advocate for juveniles who are considered delinquent, who have made mistakes, and who have sometimes done very terrible things. It is hard enough sometimes to advocate for kids who are trying to go to school and do good things. In my mind, that does not mean that they do not need someone to advocate for them, and it has important policy implications because of what happens when juveniles are first going through the criminal justice system as juveniles and then get transferred over to the adult system.

In the 1980s, we started a tough-on-crime approach. That has spilled over into the juvenile area as well. Those reforms included the revision of transfer laws and the ability to transfer juveniles from the juvenile court system into the adult system. Currently, if you are charged with murder or attempted murder, you are not even under the jurisdiction of the juvenile courts. You are automatically tried in adult courts. In addition, if you are 16 or under, you can have a discretionary transfer, which means that the court can decide whether or not it will send you over to the adult court.

The purpose of criminal sanctions is to address deterrence and recidivism. There was an amazing study done by the U.S. Department of Justice that basically says that deterrence and recidivism do not occur when we transfer juveniles from the juvenile system to the adult system. In terms of deterrence, they admit that there has been limited research in this area. There is more research in the recidivism side, as opposed to the deterrent side, but the general deterrent effect on juvenile transfer is somewhat inconsistent and does not permit strong conclusions. However, the bulk of the evidence suggests that transfer laws, at least as currently implemented and publicized, have little or no general deterrent effect in preventing serious juvenile crime.

In terms of recidivism, it is much stronger. Transferred juveniles are more likely to reoffend. There was a major study done in Florida, where it has had for quite a while now some very serious transfer laws. The study found that transferred offenders, particularly violent offenders, were significantly more likely to reoffend. Overall, 49 percent of transferred offenders reoffended, compared with 35 percent of the offenders retained in juvenile courts. For violent offenses, 24 percent of the transferred offenders reoffended, compared with 16 percent of the retained offenders. For drug offenses, 11 percent of the transferred offenders reoffended, compared with 9 percent of the retained offenders. In property offenses, 14 percent of the transferred offenders reoffended, compared with 10 percent of those retained.

There is a greater likelihood of rearrest. In a separate New York study, they found a 100 percent greater likelihood of rearrest for violent offenses and a 47 percent greater likelihood of rearrest for property offenses.

Six large-scale studies have been conducted on the specific deterrent effects of transfer. In all the studies, with respect to recidivism, among the offenders who had been transferred to criminal court compared to those who were retained in the juvenile system, the research provides sound evidence that transferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism. On the contrary, transfers substantially increase the likelihood of recidivism in juveniles.

Because I have quite a few people testifying in support of this, and I have someone from the Juvenile Public Defender's Office who can talk about the law itself and the practicality of these things, I will limit my testimony. This study concluded that to best achieve reductions in recidivism, the overall number of juvenile offender transfers to the criminal justice system should be minimized. Moreover, those who are transferred should be the chronic repeat offenders, rather than first-time offenders, particularly in cases where the first-time offense is a violent offense. I think that is the point of this bill.

We automatically put juveniles charged with murder and attempted murder in the criminal courts. They are not even given the opportunity to be dealt with in the juvenile system where the likelihood of getting some support, counseling, and education to help reduce the likelihood that they will reoffend is already gone. At the very least, we need to keep them first in the juvenile justice system. I will consider an amendment that potentially allows the discretionary certification for those 16 and under for murder and attempted murder so that the courts can make an assessment of whether or not there have been some repeat offenses in the past or some aggravating circumstances or something of that nature. The bottom line is that we have to do the most that we possibly

can to keep juveniles in juvenile detention and outside the court system, because everything that you look at points to the fact that once they enter the adult system, they are more likely to stay there and to continue reoffending.

There was a United States Supreme Court case that dealt with the death penalty and juveniles. The Supreme Court ruled that the death penalty does not apply to juveniles. Much of what the justices relied on was the fact that juveniles have not developed. They are considered less culpable simply because we know that their brains are still developing. That does not give any juvenile the excuse to commit crimes; they are still responsible for their actions. It means that we need to do more to support them and to give them the opportunity to get themselves back on track. We know that the longer they stay in this system, the harder it is to get them out. Trying to get offenders out of the adult system is hard enough. We do not need to put young kids on that track.

I would urge you to please consider all the testimony that you will hear today. We have some practical obstacles in our way because the juvenile justice system in Nevada is sorely lacking. However, that does not mean that we should not figure out a way to fix it. I am happy to answer questions.

Chairman Horne:
We do have questions. Mr. Hammond.

Assemblyman Hammond:
We did not get a chance to talk about this particular bill today. I read an article submitted to my office which mentions this very issue. You mentioned that in every case for whatever category, whether it was a violent offense or whatever, the transferred juvenile seemed to have a higher recidivism rate. Is the incarceration of a juvenile in, let us say, an adult prison compared to a juvenile facility, completely random, or is it based upon perhaps the crime or the particular individual? If you took two individuals who committed the same violent crime, and there is room in the juvenile system for only one of them, is it because he was placed in an adult prison that he has a higher chance of recidivism than the other one? Or is it that we tend to try and put those we believe are just a little bit more violent or maybe a little more incorrigible into the adult prison system, and therefore, that is why they have a high recidivism rate, because they were almost bound to be in that position to begin with. You did not mention that in the research, and I want to know what you came up with or what you have seen.

Assemblywoman Flores:
As it stands right now, the juveniles charged with murder and attempted murder automatically are tried in the adult system. They completely bypass the juvenile system, and they are automatically in the adult system. We do not even know, as far as Nevada is concerned, because they are not given that opportunity to go through the juvenile system in order for us to even compare. Regarding your questions concerning the discretionary certification, I think I am probably not the best suited person to talk about that. Someone from the Juvenile Division of the Public Defender's Office is here to elaborate more on that process. The District Attorney is here as well.

Nationally, as far as this study is concerned, there is definitely a lot more detail. The studies were very thorough in that they accounted for the differences in transfer laws throughout different jurisdictions and states. For example, they also accounted for the rural areas compared to the urban areas in Florida and whether or not there was a difference with respect to the environment. They all consistently found that juveniles, especially those who were first or second offenders, placed into the adult system consistently had a higher rate of recidivism. They consistently reoffended. Specifically for this bill, it is very important to take into account that it was the violent offenders who had the highest likelihood of reoffending.

Assemblyman Hammond:
But those were the ones that were placed in adult prisons by and large.

Assemblywoman Flores:
Yes, those were the kids who either first went through the juvenile system and were then placed into the adult system or, as in Nevada's case, were placed directly into the adult system.

Assemblyman Hammond:
Thank you.

Chairman Horne:
Mr. Hansen.

Assemblyman Hansen:
The thing is, existing law already provides for a full investigation. The juvenile court may certify a child to be prosecuted as an adult.

The deleted section is where I really have a problem with the bill. Again, after a specific, full investigation and agreement by all parties, the child could be charged . . . . You are deleting section 2, subsection 2, paragraphs (a) and (b),

which state a child, "(a) is charged with "(1) A sexual assault involving the use or threatened use of force or violence against the victim; or (2) An offense or attempted offense involving the use or threatened use of a firearm; and (b) Was 16 years of age or older at the time the child allegedly committed the offense."

All this language that is deleted is the reasonable language that was there to prosecute people who have committed very dangerous and heinous offenses. It seems to me the bill is going way overboard in trying to protect the perpetrator of a very serious crime. It also seems to me that we are trying to pin everything on the system and give these kids who are doing really serious crimes way too much leniency. Do we not have existing laws now that do a lot of those things? It is not mandatory. Why do we need to make it mandatory?

Assemblywoman Flores:
Murder and attempted murder, the most violent and serious offenses, do not even go through this discretionary process. Someone from the Public Defender's Office could explain this section better that I can. Also, I would be amenable to putting this back in for the murder and attempted murder, because this is taking away the discretionary certification for juveniles through the age of 16. However, I would have to point out that it is those offenders who are most likely, if put into the adult system, to continue to commit those types of crimes.

Assemblyman Hansen:
Would you be amenable to adding back in sexual assault and the use of firearms as well?

Assemblywoman Flores:
I would perhaps be amenable to adding sexual assault involving the use or threatened use of force or violence against the victim; but in terms of section 2, subsection 2, paragraph (a), subparagraph (2), which involves the use or threatened use of a firearm, that is just so broad. Oftentimes, people are charged with the use of a firearm because someone else within the group had a firearm. Something like that, I think, is much more appropriate.

Assemblyman Hansen:
By "group," do you mean a gang?

Assemblywoman Flores:
It could be a gang, or people who got together and decided they wanted to rob a convenience store. It could any group. It could be just two people. It does not necessarily have to refer to a street gang.

Assemblyman Hansen:
Thank you.

Chairman Horne:
Mr. Ohrenschall.

Assemblyman Ohrenschall:
Ms. Flores, thank you for bringing this bill. Not all the children who are charged with these crimes are convicted. Some are exonerated. Is that correct?

Assemblywoman Flores:
Yes. I think that is a very important point to make. The last section of the bill keeps all the juveniles housed in the juvenile detention facility during the pendency of their court proceedings, because sometimes you will have a juvenile that is facing an adult charge, whether he was certified or if it is murder or attempted murder, but who ultimately does not end up getting sentenced with time in prison. So, the entire time that this 14- or 15-year-old is sitting in an adult facility, he has to be kept away from the adult offenders. You literally have a 15-year-old that is all by himself for 23 hours a day for months and months on end while he goes through his trial, and then he ends up getting adult probation. It is a very important point to make that sometimes these juveniles are put into an adult system and then do not even end up in an adult prison, but have already been placed on that track for criminality, or at least the likelihood of increased criminality.

Assemblyman Ohrenschall:
When these children get caught up in the system and are arrested, and whether they go to a juvenile facility or an adult facility, they often become the victims of crimes there in the facility. Is that true?

Assemblywoman Flores:
I believe that there have been recorded cases of that happening within the Department of Corrections. They are juveniles who have been violated in one form or another because they are young kids. Yes, they are obviously susceptible to crime.

Assemblyman Ohrenschall:
I do not know whether you have statistics or whether it is just your logical inference, but do you believe that children will be more susceptible to these kinds of crimes in adult facilities as opposed to juvenile facilities?

Assemblywoman Flores:
Yes. You brought up an interesting point. We have here (Exhibit C) a section that explains why juveniles tried as adults have higher recidivism rates in addition to themselves being placed in an environment where they are more susceptible to becoming victims of crime. There is also the learning of criminal mores and behavior while incarcerated with adult offenders. You are literally placing juveniles who have just started out in this type of life with those who have been doing it for a long time. They are still in a developmental phase, and instead of learning good things, they are developing and learning all the bad things.

Assemblyman Ohrenschall:
That leads to my theory. It is why I like this bill. I think that a lot of kids will get exonerated, but they are there, and they are going to be learning from the masters—the adults who have a lot of time—to build up their criminal history.

Chairman Horne:
Ms. Dondero Loop.

Assemblywoman Dondero Loop:
I think we have established that we have these young people who have committed something other than murder who are in a facility where they are going to receive education, counseling, and different kinds of support that they would not receive in an adult system, specifically education. There is certainly a high percentage that will not have some recidivism. Am I correct? I am reading the fiscal notes, and I am seeing that one note actually saves us money. I think that it needs to be noted. I think you had a statistic of what percentage of children or young people actually have some recidivism versus not when you have this kind of system. I think it was higher. I would like you to reiterate that percentage.

Coincidentally, I happened to turn on the TV last night and saw a *Dateline NBC* segment about a young woman who had gotten caught up in something at a very young age, was sent to prison, escaped with her grandfather's help, and has lived for the last 30 years or so as a normal person. They caught up with her. She went back to jail for a year, but she had actually become a great mother and wife. She had a job. She just changed her name and went on. So, I would rather see it be a legal process than an illegal process. If you could give those statistics again, I would appreciate it.

Assemblywoman Flores:
I think you are referencing the statistics that I gave that found that the transferred offenders, particularly the violent offenders, were significantly more

likely to reoffend. Those statistics showed that 49 percent of the transferred offenders reoffended, compared with 35 percent of the offenders retained in the juvenile courts. There is a breakdown of violent offenders, drug offenders, and property offenders. With the violent offenses, it went from 24 percent to 16 percent. With drug offenses, it went from 11 percent to 9 percent. With property offenses, it dropped from 14 to 10 percent.

I appreciate your bringing that up, because there is a conclusionary paragraph here that I did not read. It basically states the practice of transferring juveniles for trial and sentencing in adult criminal court has produced the unintended effect of increasing recidivism, thereby costing us a whole lot of money. I think you have heard from me how much it costs to house an adult offender within the adult correctional system. It is almost $23,000 a year.

What currently exists in Nevada is a part of that unintended effect of actually increasing recidivism in this group of young people. I try not to call them kids so as not to bias the conversation, but they are kids.

Also, there is an interesting point in this conclusion in that, as far as the deterrent effect goes, juveniles will be less likely to commit a crime because they think that they might be charged as an adult and sent to an adult facility. It was a really interesting point. It says, ". . . if it was indeed true that transfer laws had a deterrent effect on juvenile crime, then some of these offenders would not have offended in the first place." That speaks to the fact that this is simply an ineffective way to deal with juvenile crime.

Assemblywoman Dondero Loop:
I think it is called peer pressure. Thank you.

Chairman Horne:
Are there any other questions for Assemblywoman Flores? I see none. Ms. Flores, did you say you have someone you wish to testify?

Assemblywoman Flores:
Yes, Mr. Chairman. I believe Gail Curtis with the Juvenile Public Defender's Office is in Las Vegas. There are others, too. Thank you, Mr. Chairman. Thank you, Committee members.

Chairman Horne:
Ms. Curtis.

Gail Curtis, Deputy Public Defender, Juvenile Division, Office of the Clark County Public Defender:

I work as a deputy public defender in the Clark County Juvenile Public Defender's Office. We represent young people who are facing transfer or certification into the adult system for their charges.

There are basically five brief points I want to make, but first I want to clarify the amendments. I think there might be some misconception that, if this bill is passed as amended, some youths who are accused of committing very serious crimes may get a "pass," and that is not the case. We are talking about a few different statutes here. The first one, *Nevada Revised Statutes* (NRS) 62B.330 is what we refer to in juvenile court as the "direct file statute." In other words, there are some charges that can come against juvenile offenders that are placed outside the jurisdiction of juvenile court. Of course, up until now, that has always been murder, attempted murder, very violent sexual offenses, and things of that order. The main change to NRS 62B.330 is that now murder and attempted murder would still be direct file cases. However, that is only for those youths that are 16 years of age or older at the time of the offense. So, youths who are younger than that and who are charged with murder or attempted murder would still remain in the juvenile court system. Certainly, they would be subject to a transfer proceeding.

However, we still have that direct file statute in effect. There would still be a direct file for a violent sexual assault, but only if that youth was at least 16 years of age at the time of the offense and prior to that had been adjudicated for a charge that would be a felony if he or she were an adult. The same would stand true for youths accused of handgun-related crimes. They could still be subject to direct file and the adult system if they were at least 16 years of age and had a previous adjudication for a crime that would be a felony if they were an adult. That would take in the major proposed amendments to what we consider the direct file statute, NRS 62B.330.

The next statute is NRS 62B.390. Under present law, a youth could be subject to discretionary certification into the adult system if he or she is at least 14 years of age and has a felony offense. The proposed amendment under A.B. 272 would raise that age from 14 to 16.

Another major change to that statute would do away with what we also call "presumptive certification." At present, there are two types of certification hearings. There are presumptive and discretionary certifications. At present, a youth can be subject to presumptive certification if he is at least 16 years old and has a gun-related offense or a sexual offense involving the use or threatened use of force and violence. In the amendment, the presumptive

portion of the certification statute, which is now NRS 62B.390, would be taken out. Youths still would not get a "pass" for serious offenses. They would still be subject to discretionary certification, but they would have to be 16 instead of 14. The presumptive part where they have to be 16 would be taken out of the bill.

As Assemblywoman Flores pointed out, the other amendment is proposed for NRS 62C.030. Currently, a youth who has gone into the adult system by way of direct filing can petition the court to be placed back into a juvenile facility during the pendency of that proceeding. But, under the proposed amendment to the statute, both those youths who had been certified into the adult system and directly filed into the adult system must now be placed in a facility for the detention of children.

There are five points we want to make in support of this bill. Some of those points have already been very ably made by Assemblywoman Flores. I will first address the science about it. Modern day science certainly supports treating children in the juvenile court system differently from adults because they are different physically, psychologically, and developmentally. They are not just miniature grownups, even though they commit some of the same crimes as adults. We now know from science that the brain is continuing to grow and develop throughout adolescence and does not fully mature until a person is somewhere in his early to mid-twenties. The last part of the brain to develop is the frontal lobe. That is the part of our brain that handles the higher executive functions. It helps us think through actions and consequences. It puts the reins on impulsive behavior. Those of us who work with juveniles know that. They seldom, if ever, think through the consequences of their acts, and a lot of them tend to be very impulsive. That is why they get into trouble. If you can visualize sending a youth who is missing that critical part of his or her brain into the adult system to face adult consequences, it just seems not to make sense.

As these children are getting into trouble as juveniles, they need to stay in the juvenile court system so that we can continue to work with them, assess them, and find out what their issues are. For the most part, they have a multitude of issues, but those issues are best addressed in the juvenile court system with those who are very practiced and experienced in working with youths and their issues. Moreover, if you have a delinquent facing transfer who has been a victim of childhood abuse and neglect, who has mental health disorders, or who may be somewhere along the fetal alcohol spectrum, et cetera, that would further impact his developing brain. It is another reason why he should not be pushed into the adult system for prosecution.

I believe Assemblywoman Flores referred to the recent U.S. Supreme Court case of *Roper v. Simmons,* 534 U.S. 551 (2005). In that case, the Court pointed out the key major differences between adults and children who reoffend. The Court said that children must be considered less culpable than adults, even if they commit serious crimes, because they are immature. They are not well developed, and they are very susceptible to peer pressure. In fact, Justice Anthony Kennedy made it clear that youth itself is a mitigating factor and that youthful offenders are "categorically less culpable" than adult offenders. He continued by saying that, "from a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

The second point is that studies have shown that transfer has little or no deterrent effect on juvenile offenders; so I will not go over the material that Assemblywoman Flores referred to.

Third, juveniles in an adult setting are much more vulnerable to being harmed, whether that is sexual abuse or just person-on-person violence. We are sending them into a very dysfunctional family. We are sending them to be housed with adults when they are not adults, and they are going to learn as they sit there with those adults. They are going to learn some very bad things that we really do not want them to learn as young as they are.

Fourth, the rationale behind the transfer laws was ill-conceived in the first place. It was an understandable response to the crime that was going on in many communities around the country where we were seeing young people commit very violent crimes. But, at the same time, pushing them into the adult system without giving them an opportunity to receive services, treatment, and guidance and mentoring does not bode well for the long-term community safety, especially if these youths are going to get their punishment in the adult system but still be fully equipped to take a positive place in the community; and they will reoffend.

Fifth, the juvenile justice system is the best place to treat juvenile offenders. Those who work in the juvenile justice system have unique expertise in working with this population of offenders. They can speak their language. They know about their communities. They interact with their families. As public defenders, we also interact more with the families. We can put a team in place around them. We can have them assessed by psychologists and psychiatrists. We can have social workers get a family history. We can look at the records. We can see whether there is a big Child Protective Services history and what brought this child, sometimes accused of very serious crimes, to appear before the juvenile court. If we can address that issue in juvenile court and keep that

youth in juvenile court, even if we provide sanctions, including correction through juvenile court, we stand a better chance of protecting the community in the long run. We will not run the risk of sending these children into the adult system, giving them adult consequences when they are not adults, and then have them in the community as convicted adult offenders as children. How are they going to get a head start in life? They are not going to be able to for the most part. That might, then, make them more susceptible to reoffending.

Chairman Horne:
Thank you, Ms. Curtis. We have a couple questions. Mr. Hansen.

Assemblyman Hansen:
Under state law right now, they have a full investigation requirement by the juvenile court system before the juvenile can be prosecuted as an adult. In fact, that is going to be deleted from one section of the law now. I am wondering why you feel current law is inadequate when it comes to these juvenile court investigations, which have to be conducted before a juvenile can be prosecuted as an adult.

Gail Curtis:
I do not believe the investigations are not helpful. They are. Our office has a part in those investigations, as does Juvenile Probation and Parole.

Could you repeat the last part of your question?

Assemblyman Hansen:
Right now, under existing law, we have this investigation process which acts as one of the checks and balances to ensure that these kids are not being prosecuted as adults. There are some significant differences that I assume you take into account, as does the district attorney and the juvenile court judge, before they make these kinds of decisions under existing law now. Is that accurate?

Gail Curtis:
I think the difference here is the law that the juvenile court judge has to consider when making the decision about whether to retain a youth in juvenile court or send that youth to district court. That decision is not made lightly. There is an investigation done, but the major changes the bill would make to our current statutes would be for discretionary certification where the judge can use more of his own decision making with the information from the investigation. Under the amended proposal, a youth could only be transferred if he or she were 16 years of age or older. That is a major change. We are trying to keep younger children out of the adult system. Right now, they can go in as young

as 14 with discretionary certification. For the more serious crimes, under what is now called "presumptive" or "mandatory" certification, that age limit was raised by the Legislature in recent years from 14 to 16 years of age. I think that is the difference. It is the law that the court has to consider once all the information is taken into consideration.

Assemblyman Hansen:
The 14-year-old provision is something that is investigated right now. Are there actually cases of 14-year-olds being prosecuted for sexual assault and firearms violations that, in your opinion, did not belong in the adult court system?

Gail Curtis:
Yes, absolutely, because even if he has committed a very serious offense, a 14-year-old is much too young to be put into the adult system. We believe that even if that youth at 14 years of age has committed a violent offense, the services that can best help that youth to be rehabilitated and give him correction or punishment if warranted, are best accessed through the juvenile court system and not the adult system.

Chairman Horne:
Mr. Hammond.

Assemblyman Hammond:
Ms. Curtis, we have heard testimony that in Nevada most, if not all, juveniles who commit murder or attempted murder are automatically tried as adults or put into the adult system. Is that correct?

Gail Curtis:
That is correct.

Assemblyman Hammond:
I understand that you are basically saying that those juveniles go in, and they sit around talking with those adults and maybe get advice on how to do things better. The adults are a bad influence on them. My concern is taking those kids who no doubt committed something very bad out of the adult prison and putting them back with the kids who really have not done something horrible and for which they could be rehabilitated and returned to school. Now you are going to put those kids who might learn from adults in the prison system to do worse things in society back with the kids who have a chance. Is that a concern?

Gail Curtis:
We are not advocating taking them out of prison and then putting them in with children. We are advocating not ever putting them in with adults in the first place. For the change that is being proposed under section 1, you would still have direct file for murder and attempted murder. You just would not have it if the youth was 16 and older. Youths 16 and older are still subject to being directly put into the adult system, but they would be subject to discretionary certification. The judge could still later decide to send them into the adult system, but they would not be directly put into the adult system, bypassing the juvenile system. The judge can at least have a look at that youth, his issues, and the offense, and then decide whether public safety requires that he be kept in the juvenile system or be put into the adult system. We are not totally excluding those who commit a serious crime from being subject to placement in the adult system, but we are certainly raising the age bar. We are saying persons 16 and older who commit attempted murder or murder will be directly filed into the adult system, whereas right now, all juveniles charged with murder and attempted murder are directly filed, and they never have one moment in juvenile court for their case to be assessed.

Chairman Horne:
Thank you. Ms. Curtis, in line with part of what I think I heard Mr. Hammond say, one of the dangers articulated about having juveniles in adult systems is they learn from adults. Would you not be permitting that same environment by putting those very same juveniles that would typically today go into adult system in with juveniles who have less serious offenses that might be in juvenile facilities? Would those juveniles not be learning from those other juveniles who have been charged with more serious crimes? Is that correct, Mr. Hammond?

[There was no audible response.]

And so, I want to know about the adult system and how it treats the offenders in an adult system as opposed to those juvenile offenders in juvenile facilities. Those facilities are operated differently, are they not? There is a different type of format in a juvenile facility than is found in an adult facility.

Gail Curtis:
That is correct. Even at present in the juvenile detention center here in Clark County, the juveniles are separated among several cottage units. The smaller and younger children would be in one cottage. Some of the youths who are there for more serious crimes, especially those facing certification, are in a different cottage. If the staff is aware that there are gang-involved youths, they try to separate those youths out so they are not in the same cottage. If we

keep youths accused of the most serious crimes in the juvenile court system, we have a mechanism in place to separate them within their group. I think that certainly that could be changed and implemented as need be, if this bill goes into place, so that a youth who is pending a proceeding, or is in a juvenile detention facility for having committed a murder or attempted murder, would certainly be kept separate from a 19-year-old or a 12- 13- or 14-year-old who is detained.

Chairman Horne:
A follow-up, Mr. Hammond.

Assemblyman Hammond:
Ms. Curtis, you say they are in cottages. I would presume that means they have different sleeping arrangements. They are in different places, but during our recent tour of one of the prisons here, we saw that there are still other times during the day when they might get together. Are you saying that the system would function to keep them apart during mealtime and yard time so that they would basically be on different schedules? Is that correct?

Gail Curtis:
That is correct. That is a question that is best answered by someone from the Department of Juvenile Justice. I am back in the detention center on a daily basis, and it is my experience that the units operate independently. One unit goes to mealtime at one time. They go out for physical education at another time. They are in their own contained unit, and they have their own room that they sleep in. Sometimes when it is crowded they may double up, but basically each youth is in his own room.

Chairman Horne:
Mr. Daly.

Assemblyman Daly:
I want to be sure of the terms so that I can follow and understand. There is not currently an amendment, but my colleague from southern Nevada talked about a potential amendment.

You keep using the word “presumptive.” I understand that it is currently automatic that children 14 years or older can go into the adult system. If you are under 14, regardless of the crime, you still go to the juvenile facility where they can do a certification. Under this bill, if it gets changed, youths 16 and older go to the adult system, and if you are under 16, you could still do it by certification down to 14. Is that correct?

Gail Curtis:
It is my understanding that, under the proposed amendment to NRS 62B.390, there would no longer be what is called "presumptive" certification. Right now, we have presumptive certification for youths who are at least 16 years old and are accused of a gun-related crime or a violent offense. In this proposed amendment, that part is taken out. We would still have discretionary certification for youths who are 16 and older, rather than 14 and older.

Assemblyman Daly:
When you are talking about the amendment, are you talking about the bill?

Gail Curtis:
I am sorry, yes. It is A.B. 272.

Assemblyman Daly:
Okay. I think that was confusing to more than just me. So, the presumption is gone. It is all certification for 16 and older. Is there anything for 14? And when you are talking about murder or attempted murder, are we still talking about 14 or 16?

Chairman Horne:
Assemblywoman Flores, will you answer that?

Assemblywoman Flores:
Yes, Ms. Curtis is talking about presumptive and direct file and the differences. Now, juveniles who are charged with murder or attempted murder bypass juvenile courts. They are automatically tried, and everything is taken care of in the adult system. This is for all juveniles, regardless of age. If you are 16 or older, then all the charges would fall under direct file and bypass the juvenile court system. We are simply saying that, up until you turn 16, you should automatically be under the jurisdiction of the juvenile courts to give the juvenile courts the opportunity to deal with you first without sending you automatically to the adult system.

Right now, from age 14 and up, the courts can do the discretionary thing. They can look at it and say, "Okay, you were charged with one of these offenses." And then they decide that, as a 14-year-old, you will be sent to the adult system. I am proposing that the courts not be able to do that until you are at least 16, because it is our position, and that of most researchers, that a 14-year-old has no business in an adult system. However, I mentioned that I was open to at least keeping the 14-year-old provision just for those who are charged with attempted murder, murder, or a violent sexual assault, in which

the court would still have the opportunity to send a 14- or 15-year-old charged with any of those three offenses to the adult system.

When we look at the research, it is those who are charged with violent crimes who have the highest likelihood of reoffending; so even that proposal seems like it would not make a whole lot of sense, simply because they are most susceptible to committing more offenses. That is the amendment that I spoke about that probably confused you. When Ms. Curtis referenced the "amendment," she was talking about the bill.

Assemblyman Daly:
So for a 14-year-old charged with one of the three major offenses you mentioned, that is not going to be automatic or presumed. It is going to be by certification. He still starts out in juvenile court, but you can put in for certification. That is where I was confused.

Chairman Horne:
I see no other questions. Is there anyone else in Las Vegas wanting to testify?

Assemblyman Brooks:
Mr. Chairman, may I ask a question?

Chairman Horne:
Yes, Mr. Brooks.

Assemblyman Brooks:
I understand that the youths are being charged at 14 and 16, and they can be transferred to adult prisons. Has there been any research done on the statistics of the number of urban youth that are being caught up in this system as opposed to rural youth?

Gail Curtis:
I believe that those figures exist. I do not have them. I believe that I would be able to get them for you from either Juvenile Justice administration or from my office. I do not have them available today.

Assemblyman Brooks:
Thank you.

Chairman Horne:
Are there any other questions from Las Vegas? I see none. Who is next to testify in favor of A.B. 272 in Las Vegas?

Esther Rodriguez Brown, Executive Director, The Embracing Project, Las Vegas, Nevada:

Thank you for providing me the opportunity to testify in support of A.B. 272. At The Embracing Project, we think there are some similarities between gangs and genocide. We provide programming to families and youths that are incarcerated in the juvenile justice system.

[Ms. Rodriguez Brown read from a prepared statement (Exhibit D).]

I would like to put some personal stories into the record. We talk about youth offenders and violent kids, and we picture them with horns. Some of these kids have really sad stories, which is no justification for their behavior, but as Ms. Curtis was saying, we have to take into consideration the whole. We have a 13-year-old right now who is going through the adult system and who has many mental issues. We have a 14-year-old who saw his brother die in his arms as a result of gang violence. There are kids who are damaged and broken. We have the responsibility to help them and put them back together.

As a youth advocate, one of my priorities is ensuring that the children and their families receive the proper services to help them with the transition into their communities in a positive manner and for the safety of all of us. There are a number of factors that make this difficult when the kids are placed into the adult system. One is when the kid is in the adult system, parents do not have any type of control over their child. They are not notified of court dates or any other issue regarding their kids. There is no service or access to programs, community organizations, or youth advocates to help the kids through the process. This makes it hard for the child and the family.

Children in the adult system can also be bailed out. That means that they will be back on our streets without receiving any type of service or treatment to address their behavioral issues. All these problems can be avoided if we keep the kids in the juvenile justice system, where their focus is on addressing mental health and behavioral disorders. But, if they end up in prison or in an adult jail, the problem becomes bigger. Most of the adult jails and prisons do not have the resources in place to focus on the rehabilitation and the needs of these kids. There is no education requirement, and even though some of the kids have access to textbooks, their schooling is completely and catastrophically disrupted during their incarceration. When these kids go back to their communities, some have been housed in an adult jail for a year, and they never make it to prison. That means they are going back into the community, and they are going back to our schools. They are so far behind that the only option is to drop out of school. This can lead to severely limited options in life. For too many of these kids, the end result will be going back to the criminal justice system.

In addition to suffering from a lack of education, youths in adult prisons are frequently victims of violence. According to a report by the Bureau of Justice Statistics, the kids under 18 represent only 1 percent of prison populations, but nearly 8 percent of victims of violence in prison are children under 18. We can add to that the fact that 20 percent of the victims of sexual violence in prison are under the age of 18.

As shocking as this is, it is the truth. Regardless of their transgressions, putting kids into situations where they are being victimized is cruel and immoral. Also, some of the adult prisons and jails address this issue in a very particular way. They separate the kids from the general population by putting them in solitary confinement with practically no human contact. All of us know that social contact is very important for a child's development and the way he learns to function well around other people. This is torture. Isolating children for 23 hours a day we can consider a form of torture. Being locked down for most of the day in a small cell can cause paranoia, anxiety, and also will exacerbate an existing mental disorder.

In addition, it is not only bad for the kids; it is also bad for society. We are all concerned about public safety. Trying kids as adults does not prevent crime or delinquency. Different research and studies have concluded that prosecuting youths as adults has little to no deterrent effect on juvenile crime. Also, 34 percent of the kids transferred to the adult system are more likely to reoffend. As a practical matter, what we are finding out is that trying children as adults creates more crime than it prevents. The juvenile justice system is the place for these kids, because they will receive treatment and education, and they will be in a safe environment away from violence. They will not be targets of violence for adult prisoners. Last year we had a rape at the High Desert State Prison. The case did not make the news, because it was considered unimportant. One 14-year-old was raped by an adult inmate who was incarcerated for life at the time.

We are in support of this bill because we need to rehabilitate our kids, not only for their good, but also for the good of our communities. We need to have safer communities. This bill addresses many of these concerns by raising the age in which children can be tried as adults, removing kids from adult jail facilities, and preventing kids from being detained unnecessarily. This bill will also help to ensure the Nevada justice system is focused on protecting and rehabilitating our kids for our own safety.

When we advocate for youths not being placed in the adult system, we do not want to put the kids back on the street. Some of them do heinous crimes, but they need our help. These kids are coming out of prison eventually. They will

not be in prison forever. If we are not giving them education, treatment, and rehabilitation, we are putting hardened criminals back into our community.

We already submitted a letter (Exhibit E) for the Committee's support. To create better communities, we have to invest in our kids. When they make mistakes, they should be disciplined, but they must also be treated and educated. Adult prisons are intended for adults; they are not for kids. In a recent study, Nevada was identified as one of the 24 states that have not reformed their treatment of juvenile offenders. I urge you to continue this trend. It is time for us to look out for our children instead of locking them away. We do not need to build more prisons. We need to build more schools and prevention programs in the community. Thank you.

Chairman Horne:
Thank you, Ms. Rodriguez Brown. Mr. Hansen has a question.

Assemblyman Hansen:
I just want to point out that in section 3, the bill actually takes out what she wants in, where the court protects a child based on substance abuse or emotional or behavioral problems.

Chairman Horne:
I think we are talking about ages, and when it comes to the work session, we can debate that and get questions and answers on the record.

Esther Rodriguez Brown:
I have a question.

Chairman Horne:
No, we get to ask the questions.

Esther Rodriguez Brown:
What if that child were yours? What would you do? Would you throw him away, or would you help him?

Chairman Horne:
I will take that as a rhetorical question. Thank you. Richard Boulware, you are up next, sir.

Richard Boulware, Vice President, National Association for the Advancement of Colored People, Las Vegas, Nevada:
Thank you, Chairman Horne. I am a member of Nevada Attorneys for Criminal Justice (NACJ) and a public defender; so I have some professional experience related to the issues at hand here.

There has already been a great deal of testimony about the evidence here; so I am not going to belabor that point. Essentially, this bill is about 14- and 15-year-olds. Unfortunately, this population is disproportionately African-American and Latino. That is a result of many societal factors that we all understand. They are related to class and discrimination. Some of the youth in our community, unfortunately, are more likely to become victims of crimes and are therefore caught up in the criminal justice system as very young adults.

I am urging this Committee, and later the Legislature, to not give up on these 14- and 15-year-olds. That is essentially what this bill is about. It is about making sure that we do not throw away the key with respect to the 14- and 15-year-olds. Let us be clear about this. If we put these young individuals into the adult system, they are going to come out as different people. They are going to come out perhaps as the adults that we thought they were, but not the adults that we want them to be. That is an important distinction. It is important to remember all the services that can be provided in the juvenile system.

It is not as if, as has been pointed out, these individuals will be coming out without support. Keeping them in the juvenile system allows them to receive support and to be monitored and to allow the juvenile system to actually assist them when it feels that the children have gone astray. The important thing is to not give up on these youths, particularly those of color who are already disadvantaged in many ways through no fault of their own. We know that when a child has been a victim of a crime, he is more likely to commit crimes. We know that when they have been the victim of violent physical and sexual abuse they are also more likely to commit crime. But, we also know that there are successful interventions.

We also know that there is a higher success rate for rehabilitation in the juvenile justice system, particularly for these youths of color. I urge this Committee to follow the example of Assemblywoman Flores in making sure that we do not give up on these children. That is what they are: children. Those of us who are here, for the most part, with all due respect, do not have connections to these types of environments. Many of us have benefitted from the support from our community. No one is successful in his or her life without someone

supporting them and helping them when he makes mistakes, no matter how tragic or serious the mistakes may be.

All we are asking in this bill is that when these youths make mistakes, we try to pick them up and help them become successful young adults. It is about providing the resources for rehabilitation. I think people may have concerns about the fact that these individuals may do harm, and I am not unsympathetic to that idea, but I think that, at first, an attempt should be made to try to help them and save them. That is all I think we are asking, that that attempt be made, because they are children; they are not adults.

There are many studies that talk about the differences in terms of development. I am not just talking about maturity. I am talking about physiological development of young people in terms of their brains and the way that they think and understand things. Significant studies demonstrate that fact. It is not as if this is based simply on purely sentimental grounds. There is strong evidence in terms of its efficacy and its fiscal impact, because obviously if individuals recidivate or commit crimes down the line, that has a significant impact in terms of incarceration at an older age. It is important for us to recognize these youths, and particularly those of color who are already disadvantaged in lots of ways. We are trying to help them. We are trying to save them. We need your assistance to do that, and this bill can certainly do that. I ask that you support this bill on behalf of the National Association for the Advancement of Colored People (NAACP), NACJ, and the League of Women Voters. I am wearing many hats, even though I am not a woman. I want you all to understand how strong the community support is for these young individuals.

Chairman Horne:
Thank you, Mr. Boulware. Mr. Hammond.

Assemblyman Hammond:
Mr. Boulware, on NELIS there is an exhibit from the juvenile court jurisdiction (Exhibit G). Slide 10 gives us the number of statewide cases in which juveniles aged 15 and 14 were tried, how many instances in which the state was seeking certification, and now many were granted in the end. I think it said seven cases were granted by juvenile court judges in the state in 2010.

It seems like the system we have in place now gives the discretion to the judge to evaluate these individuals brought up on charges. I am all for redemption and second chances. Do you not think that judges have discretion as it is? As a school teacher, I know there is going to be that kid on the playground or in class that maybe yells back at the teacher one too many times or maybe gets in

fights. We want to make sure that we help him out. I am all for that, but it seems that the judges here have the discretion to evaluate the individuals who appear before them. Do you not think that the judges already have enough discretion for these 14- and 15-year-olds?

Richard Boulware:
Thank you, Assemblyman Hammond. I do not have the slide in front of me; so I cannot comment on that specific data, but I will try to answer your question, nonetheless. As I understand it, we are trying to essentially give the juvenile justice system more time. I am not saying that judges do not have some of that information in terms of the certification process, but this also relates to the issue of direct file and bypassing the juvenile justice system. The bill does a few different things, but that is one of the main issues. We are not trying to take away discretion from the judges per se; we want to give the juvenile justice system a few more years to try to work. It is not as if the judges will not have that discretion to be able to review that material when a child turns 16. We are trying to say that between the ages of 14 and 16, the juvenile justice system has an opportunity to do what it needs to do to assist those youths. I agree with you. I am not saying that a child who has these difficulties should be placed back on the playground. I am saying that we have very significant intervention procedures and policies and monitoring of these youths that can and do work.

Assemblyman Hammond:
Thank you very much.

Chairman Horne:
Are there any other questions? Mr. Brooks.

Assemblyman Brooks:
Thank you, Mr. Chairman. I would contend that no 14-year-old is ready for adult prison. That is my opinion, and I am a sponsor of the bill.

Mr. Boulware, what is the percentage of African-American and Latino youth that are predisposed to this type of incarceration?

Richard Boulware:
I do not have the exact numbers. Unfortunately, the head of the juvenile services system was recently here. I do not want to misspeak. I can say it is disproportionate to the population. I can say that the representation is so unbalanced that there is a committee here in the Las Vegas area about disproportionate sentencing and incarceration of youth of color. I do not want to give exact numbers because I do not know them. I do know that it is so

unequal that the juvenile system here, including the judges, has formed a special committee to try to address that particular problem. It is difficult because you have to figure out which populations you are talking about. If you are just talking about individuals who are into more violent offenses, the representation is even more disproportionate. If you are just talking about incarceration in the juvenile system, you have different rates in terms of which numbers you are talking about. It is fair to say that across almost all rates that the rate of incarceration for minorities is going up, while the rate of incarceration for nonminorities is going down, even in the juvenile system.

Assemblyman Brooks:
Are there any studies about the disparity of minority youths that actually go to prison for similar incidences in which maybe their counterparts, who might be Caucasian, do not go to prison?

Richard Boulware:
I am aware of some studies that show some of the disparities. I am not aware of one necessarily that has been completed in Nevada. We know that there is a general disparity based partly on race and partly on socioeconomic background. If you have less money, and you come from a poor background, you are less likely to avoid the adult system certification; whereas if you have the resources, you are more likely, whether you are white, black or Latino, to be able to avoid the adult system. However, generally the studies across the states tend to indicate that minorities are going to be disproportionately represented; and they are not going to be able to avoid the system in the same way that people who are nonminorities are.

Chairman Horne:
Thank you. I see no other questions. Is there anyone else in Las Vegas wishing to testify and put new information on the record for A.B. 272?

Michael Lawson, Private Citizen, Las Vegas:
I am with Remnant Resurrection Youth Recovery, and I am part of the committee that was spoken of earlier. I was certified at the age of 16 for the crime of robbery. I came to testify about some of the things as far as the difference between juvenile detention and adult prison.

About the upside of keeping these juveniles in a juvenile facility, there is a lack of programming. Any programs that were there in the prison have been either taken away because of funding or the juveniles have been transferred to a different system. I think keeping these juveniles in juvenile facilities would help economically, as well as morally. We have a part of the next generation who is going to pay into Social Security and so forth. We were talking about the

recidivism rate. When they go to prison, it is more likely for them to come back. So, in turn, the state is spending more money continuously. Ninety-nine percent of these kids are not reacting right. I personally took the initiative within the prison to say "I am done with this, and I do not want to do this anymore," but 99 percent of them are victims of crime, rape, and robbery. They are getting involved with gangs for protection. They are angry; so they are reacting wrongly.

I am not giving any excuse by far for any of them, but I feel like if they were dealt with in a better manner, that they would react right and that we could potentially help them become productive citizens within this society. Not only are the children affected, but their families are affected. I have two children. Their mother did not have things to provide to them. I was gone; so was my mother. Their mother began to have seizures and blackouts. My father, who was doing well in a treatment program, went back onto the streets.

I am not giving any excuse, but it is affecting not only these children, but their families. When I got out of prison, it was kind of hard for me to get a job. It took a while. I was not deterred; I did get a job, but for the majority of them, and I know some who have come from prison, they are back doing the same thing. I would definitely advocate that A.B. 272 be passed and that we give these children more of a chance so that they have a future. Thank you.

Chairman Horne:
Thank you, Mr. Lawson, for coming down on this Saturday morning to put your comments and experiences on the record. Are there any questions for Mr. Lawson? Mr. Brooks.

Assemblyman Brooks:
How long were you incarcerated?

Michael Lawson:
For three years.

Assemblyman Brooks:
In order to survive in prison as a young man in an adult prison, do you think that you had to join or belong to a gang? Do you feel it would have been easier had you been in a juvenile facility without having to comingle among adults?

Michael Lawson:
Most definitely. I feel that it would be better for young adults to be in the juvenile system. I did not feel the need to join a gang, but just to be honest, the other juveniles in that position felt a need. I have seen them. I had been in

prison for a year and a half, and some of them would come in, and automatically the older guys will come and say, "Hey, man, what is your name? Hey, I'm so-and-so. What up? Where you from?" And they would bring them in. They are scared. They have not been there before. They do not know what is going on. All they know is they are among adults, and they feel a need to be in that crowd to be protected. I was focused on positivity, and I had a family member there; so I was kind of with him.

Ninety-nine percent of them are not reacting the way I reacted. They are getting into gangs. They say, "I know how not to get caught this time." I am not excusing their behavior because there are some things that need to be dealt with on a higher level. I feel there are some that are not being dealt with correctly on the adult level. They can be dealt with on the juvenile level because there are way more resources to deal with them mentally, as well as naturally, on what they may need; whereas the prison system is built for adults. In some aspects they really do not care because they have kind of given up on these people in prison; whereas with these juveniles, you have people within the system who have a heart and want to see these kids progress and have a future.

Personally, I had curfew tickets and I had missed class when I caught this crime for robbery. I really did not have a background, but they automatically certified me. When we go to discretion in the law for certification, subjective factors such as community ties and family support should be considered in the courtroom. I have sat in on some of these cases. They are not even going with the subjective factors. Some of these youths have family support, but they are certified anyway, and they end up going to prison. I think there could be a little bit more discretion as well.

Chairman Horne:
Mr. Sherwood, do you have a question?

Assemblyman Sherwood:
Thank you. Mr. Lawson, thank you for coming in. That was inspiring testimony. Keep up the good advocacy. I appreciate it.

Michael Lawson:
Thank you very much.

Chairman Horne:
Is there anyone else in Las Vegas? I see none. Is there anyone else here in Carson City to testify in favor of A.B. 272? Please come to the table.

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:
I had drafted some written testimony (Exhibit F), but I will just submit it for the record and sum up by saying we are in full support of the bill. We believe that the State of Nevada created an active juvenile justice system in order to respond to the needs of juveniles. We think that the state could be better utilizing this system; and we think that this bill helps the state more proactively use it to the fullest extent possible in order to properly facilitate the placement, rehabilitation, and reintegration of juvenile offenders as it was originally designed to accomplish. Thank you so much for your consideration of this testimony. We think that the youth of the State of Nevada really deserve this bill to be passed.

Chairman Horne:
Thank you, Ms. Gasca. Are there any questions for Ms. Gasca? No? Ms. Jones.

Tierra D. Jones, representing the Office of the Public Defender, Clark County:
Everything I was going to say has already been said; so I will just say we support this bill.

Chairman Horne:
Thank you. Are there any questions for Ms. Jones? I see none. Is there anyone else to testify in favor? We will now move to the opposition for A.B. 272. Mr. Bateman.

Sam Bateman, Deputy District Attorney, Office of the District Attorney, Clark County:
We are in opposition to this bill. I want to talk about a couple items briefly. I provided a PowerPoint presentation (Exhibit G). I will not go through all of it because of the late hour, and it is my understanding that you all have a copy of it.

There are two major points. We addressed the age issue, as you noted, in 2009, with regard to discretionary and presumptive certifications; and we came to a negotiation that everyone thought was in the best interest of the process. The first thing I would ask in entertaining this legislation is that you consider what, if anything, has changed between 2009 and today. I would submit that, to my knowledge, nothing has changed. That does not mean that you should not consider policy matters. I certainly understand the concept of some people being uncomfortable with someone of the age of 14 or 15 being treated as an adult.

Some people think that if you commit a "big-boy crime, you do big-boy time." That is a fair statement to talk about, but I suggest to everyone here that you cannot talk about the juvenile system and certification and what to do with juveniles unless you talk about the entire system. We have heard a lot today about keeping them in juvenile court because it is better for them. There are no secure facilities anymore for the most egregious offenders in juvenile court. There is no place to put them, be they murderers, sexual assailants, or armed robbers. At some point, there is simply no place in the juvenile system to put them. We have closed Summit View Youth Correctional Center, which was our only secure facility. What we have now are essentially camps.

I have no problem at all with talking about what to do with 14- and 15-year-olds. We need to take a holistic approach so that we can make informed decisions about what is appropriate to do with a 14- or 15-year-old who commits serious offenses and whether we have the resources and the tools in the juvenile system to deal with him. In the interim we have various committees and studies, including an advisory commission chaired by you, Chairman Horne. I think it is something that could be looked at, and the District Attorney's Office would be happy to be involved and to provide information and to be a partner in that process.

I want to run through a couple of quick slides (Exhibit G). This legislation has a number of components. One of them is about the certification of juveniles. The other is section 4, which addresses the detention of juveniles prior to adjudication. We are not taking any position on the detention of juveniles prior to certification or who are in criminal court pending resolution of their case. That is for other people to weigh in on. We are opposed to the changes in certification laws, which are putting murderers back into the juvenile jurisdiction, increasing the age from 14 to 16, and getting rid of presumptive certifications. That is what the District Attorney's Office and the Nevada District Attorneys Association is opposed to. You have heard that the current state of the law is that murderers and attempted murderers do not go to juvenile court; they go directly to adult court.

There is some information in the PowerPoint presentation that you can look at if you want to understand a little more about presumptive certifications, meaning a juvenile committed a crime and starts out in juvenile court. The District Attorney's office files a petition, and it seeks to have that juvenile certified to criminal court to be treated appropriately there. Presumptive certification is what it talks about. You have to be 16 years of age or older, and it is on the juvenile to explain why he should not be certified. These are obviously for very serious crimes like sexual assault or violence involving a firearm. In 2009, the presumptive certification initially had an age requirement

of 14 years. We moved that to 16. That was the change we made in 2009. We left the 14-year-old requirement on discretionary certifications, which means the state has to come in front of a judge and explain that, given the circumstances of the case and the history of the juvenile, the juvenile should be sent to an adult court. We bear the entire burden. The state has to convince the judge that the juvenile needs to be sent to adult court, and the judge has the complete discretion whether or not to send that juvenile to adult court. This legislation proposes to change that. We negotiated in 2009 to keep it where it is now. I think, based upon the statistics you will see in a minute, you will see that we use our discretion very carefully, judiciously, and appropriately.

Slide 8 (Exhibit G) shows some of the processes that the court has to go through and what it looks at to certify a juvenile to adult court. It looks at the nature and seriousness of the charges; the criminal history of the juvenile; and subjective factors such as his age, maturity, and family ties. All of these things are taken into account by a juvenile court judge when deciding whether to certify the juvenile.

The next slide shows some statistics. We started taking serious statistics in 2010 so that if you wanted to take up this issue again we could tell you what exactly is going on. In 2010, 9,663 cases were filed against juveniles in Clark County. Those juveniles came into the juvenile system for delinquency. Of the 12 direct files that you see there, 2 of them were murders, and 10 were attempted murders. Those were 14- and 15-year-olds. Of those 9,663 cases, the District Attorney in Clark County had 12 direct files. That is 0.1 percent of all cases. For all juveniles, the District Attorney filed 136 certification petitions, which was 1.4 percent of all cases. So, out of 9,663 cases, the District Attorney only sought certification on 136 juveniles between the ages of 14 and 17. I think we are exercising our discretion very judiciously and appropriately. It is a very small number, and it is only the most serious of juveniles that need to be dealt with in the adult system.

Chairman Horne:
Are those 9,663 all juveniles?

Sam Batemen:
Correct.

[Mr. Bateman read from slide 10 (Exhibit G).]

Just because we file a certification petition, that does not mean we go all the way through with it. Sometimes we find out more information and decide it is not appropriate to seek certification.

We heard a lot about how we have to keep them in the juvenile system where they can receive services. Sometimes the juvenile system is just not equipped to deal with these particular juveniles. Of the 17 that we certified, 6 were on formal parole, which they were committed to by the state previously. They have already been through the system and committed and were out on formal parole when they committed the serious offense that caused us to seek certification. Four were on formal probation. Nine of the offenses were armed robberies. Three of them were sexual assaults. Three were burglaries. I know that some people in the State of Nevada have problems including burglaries. Every time a child comes into the juvenile system, he gets a petition. On slide 11 (Exhibit G), the "Pets. 15, 19, 21" means that when they committed the burglary, they were either on their 15th, 19th, or 21st petition, or "run," through the juvenile system. It was not as if they committed a burglary on their first offense and we brought it in front of the judge and requested a certification. It shows that at some point, the District Attorney's Office said, "We are not doing the job in juvenile, and we have to protect the community at some point." One was for discharging a firearm into a structure; another was for battery by a prisoner. Those are the 14- and 15-year-olds in Clark County for whom we sought certification in 2010.

If your position is to never seek certification on a 14- and 15-year-old, that is a policy decision. I understand it, but do not be misinformed or misunderstand what is actually happening on the ground. This is not something that we are doing willy-nilly.

The proposed changes in the bill are to put murders and attempted murders back into the juvenile system, which is bypassed in the first place. Remember, if you have a murderer or an attempted murderer, you have to house him pending the adjudication of his charges. You are putting someone who is charged with murder or attempted murder next to the kid who has committed a graffiti offense. That is an issue that you must take into account. That goes back to the holistic approach I spoke about.

We removed the presumptive certification, which occurs when you have seriously dangerous offenses. It raises the age to 16 so that you cannot ever certify a 14- or 15-year-old. These are significant changes, compared to what we dealt with in 2009.

I think you really need to understand whom we are dealing with. Information of the juvenile identified as S.H. is on slide 14 (Exhibit G). S.H. sold the victim in this case some rock cocaine, pulled out a gun, demanded all of the victim's money, shot him in the head, and killed the victim. It occurred when S.H. was

15, and this went straight to adult court. He was charged with murder and robbery.

We might get the impression that a kid went from "0 to 60" and had not done anything else, and suddenly he is finding himself in the adult system. Slide 16 shows the delinquency history of S.H. This individual had 22 runs through the juvenile system before this individual committed a murder and ended up in adult court. All of the cases listed in Petition 22 were handled in juvenile court. I think you get the point.

These kids are the worst of the worst. I hate to use that term, but that is what we are dealing with when we are talking about certification. Slide 17 shows more of the individual's criminal history back to when he was 11 years old. It is sad. I wish the system could have dealt with this particular juvenile in a better manner than it did. Shame on us for not doing it but, unfortunately, that is the state of Nevada right now.

We have heard that juveniles need and receive more services in juvenile court, and they can be treated such that they will not do these things in the future. S.H. had one term of informal probation. You can see the progression on slide 19. There were three terms of formal probation, residential treatment center placement, three commitments to the state, and three terms of formal parole. The juvenile system did everything it could for this particular offender. At some point, you just have to protect the public and deal with it in adult court.

I have another example. This is pretty serious stuff. The victim left home to run an errand.

[Mr. Bateman read from slide 20 (Exhibit G).]

This is an attempted murder that we charged. It went straight to adult court. Under the law, that was the process, and I think you will see it is appropriate. R.T. was 15 years old. He had already had eight petitions. This was a first go-around. As a 13-year-old, he had an attempted home invasion charge. The services he received in the juvenile system included two terms of formal probation, placement at Spring Mountain Youth Camp, two commitments to the Nevada Division of Child and Family Services (DCFS), and three terms of parole. We gave these juveniles the services that they needed.

In the two abbreviated cases I brought up, we had actually sought certification earlier on one of those petitions, and it was denied. If the judge had certified the individual and we had dealt with him as an adult, maybe those murders and attempted murders would not have happened. That is hard to predict, but

I think that is worth noting. In both of those cases, our attempts at certification were denied.

There are more slides (Exhibit G, slides 28 through 31) showing that there is literally nothing left in the state for correctional facilities for juveniles. We simply are not designed anymore to handle the most egregious offenders. Spring Mountain Youth Camp is kind of like a boarding school in a sense. It is a nonsecure facility. Probation officers do not carry weapons. They are going unarmed to the houses of these juveniles on parole. They are not like the parole and probation officers you and I think of.

I would suggest that we not pass this bill, at least as it relates to certification. I have no problem with taking on these issues in the interim and being part of that process. Hopefully, the funds will be there to continue to help juveniles in the process so that we do not get into these particular positions. I apologize for going on and on. I would be happy to answer any questions.

Chairman Horne:
Thank you, Mr. Bateman. Are there any questions? Mr. Brooks.

Assemblyman Brooks:
Mr. Bateman, I appreciate your presentation and your willingness to provide some statistical information. Because you are willing to do that, I would like to ask you to provide us with the statistics that I asked for earlier—the percentage of minorities that are in these adolescent cases. Could you also provide the percentages of those who are physically harmed and sexually abused in adult prisons? I would also like to know how many are sexually abused, commit suicide, and the percentage of recidivism. Thank you.

Sam Bateman:
I can look into what statistics we keep in those areas. If we are not doing a very good job now, we would need more time to do it. The Nevada Department of Corrections has worked very hard over the last few years to create a way of handling juveniles that come into the prison system. They do not just get put into the same population as adults, and programming has been created. They have been way ahead of the curve. The concept that we are sending juveniles into adult prisons and putting them into the same cell as a hardened adult criminal is just not the case. I would invite Mr. Brooks to take a look at that and give Acting Director Cox a call to get more information.

Chairman Horne:
Thank you. Are there other questions? Does anyone else wish to speak in opposition to A.B. 272?

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association:
Mr. Bateman covered most of the issues that we are concerned with. We oppose the bill. Ms. Brown said that they segregate the violent juveniles in Clark County. Realize that there are 16 other counties in the state, and they do not all have the same resources or facilities to do that.

Chairman Horne:
Thank you, Mr. Adams. Are there any questions for Mr. Adams? Seeing none, we will move to the neutral. Does anyone wish to speak neutral for A.B. 272?

Chuck Callaway, Director, Intergovernmental Services, Las Vegas Metropolitan Police Department:
We echo the concerns of the District Attorney's Office, and we are in opposition to the bill.

Chairman Horne:
Thank you, Mr. Callaway. I see no questions. Hello, Ms. Graham.

Elana Graham, Director, Intergovernmental Relations, Eighth Judicial District Court:
Judge William O. Voy is a family court judge who deals almost exclusively with juveniles in his courtroom every day. We are neutral because Judge Voy is very much in favor of the idea behind this bill; however, he thinks the ideas contained in this bill should be referred to the Supreme Court Commission on Juvenile Justice and fully vetted by that Commission with any proposed changes to the juvenile court jurisdiction coming in 2013.

The reason he thinks it should be referred there, is because of the provisions listed in section 4 of this bill. As Mr. Bateman mentioned, currently the juvenile court does not have the facilities, services, or staffing to put these higher level offenders away from lower level juveniles who are in juvenile detention for things like graffiti or truancy. The people waiting for their murder or attempted murder trials could be there from six months to two years. That is a very long time, and it would be a burden on the juvenile detention centers. Right now, we just do not have the resources to handle it. That is our main concern. I will answer any questions you have. Judge Voy is very willing to work with Ms. Flores on this in the interim to fully address her concerns and improve the system that we have in place. I thank you, and I want to put on the record that I feel a special bond with everyone in this room, since we all have to work on a Saturday.

Chairman Horne:
I see no questions. Did I see one more person from Las Vegas for neutral?

Michael Lawson:
I just want to speak about the juveniles not being put into cells with adult offenders.

Chairman Horne:
Mr. Lawson, be very brief. I am about to close this hearing.

Michael Lawson:
They have developed a program for youth offenders. There exists a level system within the prison. There are levels one, two, and three. They also have a youth section, but not all of the youths are put into that section. They are still overcrowded, and they still house the younger inmates with the older inmates most of the time. The majority of the time, they are put into the same unit or cell as an older inmate.

Chairman Horne:
Thank you, Mr. Lawson. With no other testimony, I am going to close the hearing on A.B. 272 and give the Committee a quick break.

[The Committee recessed at 12:38 p.m. and reconvened at 1:01 p.m.]

Next on the agenda is Assembly Bill 339.

Assembly Bill 339: Requires certain substances known as synthetic marijuana to be included on the list of schedule I controlled substances. (BDR 40-546)

Thank you for your patience this morning, Mr. Ellison. Please proceed.

Assemblyman John C. Ellison, Assembly District No. 33:
Thank you, Mr. Chairman and Committee members. I am here to submit for approval A.B. 339. This bill would require the State Board of Pharmacy to include certain substances known as "synthetic marijuana" on the list of Schedule I controlled substances, providing criminal and civil penalties, and providing other matters. A lot of you might know it as "spice." In your board packet on the Nevada Electronic Legislative Information System (NELIS) is a resolution (Exhibit H) that was created by the Elko County Board of Commissioners. This was done following a lot of testimony from people from all around Elko, Humboldt, Eureka, and, I believe, Washoe Counties to come down and help with this resolution. With them was Judge Andrew Puccinelli, family Court Master Mason Simons, and the Department of Juvenile Probation.

With me today, I have the forensic scientist for the Washoe County Sheriff's Office. She is more of an expert on this. This bill was brought forth previously by Assemblyman John Carpenter. Assemblyman Goicoechea and I thought this was so important that we signed onto the bill to help move it forward.

If you will notice, there are two other similar bills out there. There is Senate Bill 228 and Senate Bill 224, which relate to the same thing. They are almost the same bill as far as synthetic marijuana goes. If you do not mind, Mr. Chairman, I would like to go forward with Washoe County.

Diane M. Machen, Criminalist, Forensic Science Division, Washoe County Sheriff's Office:

"Synthetic cannabinoids," as they have been termed, have just recently come into our world. They were not available when I was in high school or college, and they are typically being marketed toward teenagers or people in their early 20s. They are readily available. You can go to many convenience stores, head shops, truck stops, and other similar locations and purchase these items. I have brought several of them with me so you can actually see what they are. The synthetic cannabinoid has been sprayed onto some sort of plant or vegetable base material. It is not the vegetable material that is of interest. It is what has been put onto that material.

I attended a meeting of the American Academy of Forensic Scientists in Chicago in February 2011. Most other states have taken similar action in trying to control the various synthetic cannabinoids. There were fewer than five states that had not taken action, and Nevada was one of them. The federal government has taken similar action.

The synthetic cannabinoids listed in A.B. 339 are only five particular compounds. There are many more synthetic cannabinoids than those five. One of the things they think we will need to address as a state is how to cover the remaining synthetic cannabinoids outside those five.

I will pass these particular products (Exhibit I) around and let you look at them. One of them came out of White Pine County. A drug court judge sent it to me. On the back, it specifically says that "this product does not contain JWH-018, -073, -081, -200, -250; HU-210; and CP 47,497." So, the market is already moving, based on the federal action that was taken to control these five substances. The federal action that was taken, though, is different than what we are able to take with the bills as they have been proposed in both the Senate and the Assembly. The federal government has an analog statute, which allows them to take these five substances and then, say, make a slight

chemical modification of them, and they are able to control that analog as well. In Nevada, we are limited in that we do not have an analog regulation in our statute. There are a couple ways that we could pull in other synthetic cannabinoids that are now being seen in our community. That would be via some sort of analog-type statute or by controlling these substances by more of a generic class. The United Kingdom proposed such a venue for controlling these particular compounds.

I have purchased some of these products myself. Some have come out of Elko. Some came out of White Pine County.

Chairman Horne:
Committee members, look at the samples and pass them on.

Diane Machen:
Typically, these substances are ingested by smoking, similar to marijuana. You could get your glass or metal smoking pipe from a head shop, or you could roll your own cigarettes. They have adverse effects, in that they cause delusions, hallucinations, anxiety, and delirium. You would never actually die from ingesting these compounds. You would not overdose by ingesting them, but they do alter one's ability to make good judgment, multitask, or to operate vehicles or machinery. There have been cases of people using these substances and ending up in the emergency room, or anecdotal information that would indicate that these people, after consuming these substances, inflicted harm upon themselves or others. There have been some limited smoking studies performed in Missouri where they had people ingest 073 and 018 and observed the subjects and their abilities to perform standard field sobriety tests and things like that.

Some of the compounds are reported to be ten times more potent than marijuana. They are typically very expensive. I have bought about seven of these packages. It cost about $150 to buy seven packages.

Assemblyman Ellison:
Mr. Chairman, if you like, you can pull off the caps and smell the product. The vial included in the samples sells for about $50 in most gas stations or shops around Nevada right now. Also, you will see that the *Reno Gazette Journal* published an article titled "Synthetic Drugs Sent Many to ER" just recently. There are quite a few advertisements like this coming out. It shows how many people end up in the ER or institutions to be incarcerated. You also see that it will have a financial effect, as far as jail detention facilities are concerned. I think that will be well offset by what we are paying in medical cost right now.

My colleague will talk about the Schedule I status of the drugs.

Diane Machen:
Our laboratory provides forensic services for 14 of the 17 counties in Nevada, so we have a vast jurisdiction. Some communities or counties have created local ordinances, because they are having such severe problems. Those locations include places like White Pine and Eureka Counties. Because these products are being marketed as providing "legal highs," they are being consumed quite frequently in some communities. Those communities do not have many ways of dealing with these people because these substances at this time are not illegal. Most of the states have taken action to control these substances or create regulations or some sort of emergency legislation. All the states have placed these substances into Schedule I, as has the federal government.

When a substance is scheduled, the State Board of Pharmacy looks at several factors. One of them is whether the substance has any pharmaceutical or medical use. For instance, Diazepam has a lot of legitimate medical use, so it is actually a Schedule 4 substance. They also look at the abuse potential a compound has. Something like lysergic acid diethylamide (LSD) does not have any real legitimate pharmaceutical use but has high potential for dependence, and its effects are quite extreme. So, that goes into Schedule 1. For those sorts of reasons, all the states that have taken action have placed these synthetic cannabinoids into Schedule I.

"Synthetic cannabinoid" is something of a misnomer. It is a name that has been given to these compounds only because they act on the same receptors as delta-9 tetrahydrocannibinol (THC), which is the active ingredient in marijuana. These synthetic cannabinoid compounds are reacting in the body in the same way. They are not necessarily structurally or molecularly related to THC. We should use the term "synthetic cannabinoid" very loosely in that they really are not necessarily cannabinoid compounds.

Chairman Horne:
Ms. Machen, if this bill were to be processed, making this a Schedule I drug, what would be the penalties? Would you be in violation like with any other Schedule I drug?

Diane Machen:
I do not deal with the legal side of things. It is not my area of expertise. I can give you some limited information, but as far as what type of penalties are involved, I cannot address that. I can say that, for Schedule I substances other than marijuana, which is treated differently, if you have 4 to 14 grams, you are

at a level-one trafficking. From 14 to 28 grams, you are at level two trafficking. For anything greater than 28 grams, you are at level three trafficking. Each of those levels can bring different charges and penalties. Things are placed in Schedule I if they have no legitimate pharmaceutical use and have a high potential for abuse.

Just so you understand how these compounds came about in our world, most of them are labeled "JWH," based on a particular professor, John W. Huffman, who was doing research and trying to find pharmaceutical materials that could be used to treat cancer and other chronic painful conditions. He is actually the one who has developed the majority of these. Some of them have been developed by other pharmaceutical companies, and they are labeled as something other than JWH. If you look at their chemical names, you can see why we have short names for them.

In looking at these compounds for pharmaceutical purposes, it has been deemed that they did not have the particular features, or they had too many side effects, and so they were not something that was going to be of value for that pharmaceutical company, and now they have gone into the illicit world. A lot of them are being made in China. Dr. Huffman has developed a compound which has already made it into the illicit market without being published in scientific journals. That is how quickly the illicit market is moving.

Chairman Horne:
Are there any questions for Ms. Machen? Mr. Sherwood.

Assemblyman Sherwood:
Is there any way to go after the marketing or packaging or something? Is there another remedy that you have thought of aside from just categorizing every new compound like you do? I am looking at the labels. They all say "not for human consumption." There is a commonality between the ways these things are marketed. Is there a way we can go after this maybe in tandem, maybe in place of just putting these compounds under such a restrictive barrier? Is there another remedy for this problem?

Diane Machen:
I can answer a little bit of that, and, if there is an attorney in the room, maybe he can help elaborate on that. There are different ways you can place them in the regulations as a controlled substance. You can list them specifically by name, as we are starting to do with these five. You can try to get them as a group by going with the generic-class approach as the United Kingdom has proposed. You can also list specific compounds and create something like an analog log to try to bring more of those in.

The packaging is very specific in saying that they are not for human consumption. That is intentionally done by the manufacturers, in that it helps them get around some particular part of the federal government *Code of Federal Regulations*, Title 21. That is very legitimate. I have limited understanding in the legal arena, but the only way right now, without some sort of regulation in the books for Nevada to charge someone with some sort of crime if he possesses these materials, would be only if he still possessed that package that said "not for human consumption," in which case he would be charged with a misdemeanor and not a felony. So, if Assemblyman Daly decided to take his vegetable material out of the package, throw the package away, and keep it in a Ziploc bag in his pocket, he has eliminated that package that says "not for human consumption." There would be no violation, even at a misdemeanor level. From looking at the packaging materials, you cannot tell what is in them. I did not find any synthetic cannabinoid in a particular product called "Grape Ape" out of West Wendover. It actually needs to come into the laboratory for testing for us to tell what, if anything, is there.

Chairman Horne:
Ms. Diaz.

Assemblywoman Diaz:
Is synthetic marijuana a lot more harmful than natural marijuana?

Diane Machen:
Yes, the active ingredient in marijuana is THC. The reports that have been given for these synthetic cannabinoid compounds indicate that some of them are actually ten times more potent than the THC molecule. A study available online and created by the Advisory Council on the Misuse of Drugs (ACMD) of the United Kingdom provides values for each of the synthetic cannabinoid compounds and how they rate in potency compared to delta-9 THC. Many of them are more potent than THC, and there are some that are less potent. They typically are not going to be something you will see.

One of the things listed on the packaging is a compound known as HU-210. It has an isomer known as HU-211. The difference between the two simply involves changing the position in space of how this molecule hangs. HU-210 is extremely potent. HU-211 has very little, if any, psychoactive effect. A very slight modification of a molecule can change its psychoactive nature.

Assemblyman Ellison:
Along that line, Mr. Chairman, when these chemicals were first being detected in the juvenile facilities, they could do a drug test, and it would not come up. Basically, they had to create a different type of test to track this through the

mining industry. Some people were buying them and working at the mines. They had a heck of a time tracking what these chemicals actually were. If you look at section 1, subsection 6 of the bill, it says, "The Board shall designate as a controlled substance included in schedule I any material, compound, mixture, or preparation which contains any quantity of the following substances . . . ." Those include salt and isomers. When I talked to the State Pharmacy Board, they told me that bath salt is one of these chemicals.

Chairman Horne:
Mr. Sherwood.

Assemblyman Sherwood:
So, one of the concerns that people have about supporting this kind of legislation is where to draw the line. Are bath salts now going to be regulated? Will we have to get a prescription to buy bath salts? We are having the same argument with cough medicine. Can you alleviate our concerns that if we support this bill we will not be putting up unneeded barriers for the rest of us that just want to live our lives right?

Diane Machen:
To clarify, bath salts and synthetic cannabinoids are two totally separate issues. They are two different types of compounds. There are two bills being discussed in the Nevada State Senate. I testified on both of them. One bill deals with the synthetic cannabinoids, and the other deals with bath salts.

To educate the public and this Committee, when we use the term "bath salts," we are not talking about those sold in bath stores where you can buy a vat for $20 and that I would give to my 82-year-old lady friend for soaking in the tub. We are talking about material that comes in canisters similar to those used for lip balm. It is a white, powdery substance. You usually get maybe a half of a gram for about $27. If you used it to soak in the bath tub, you would really be wasting your money. They do not contain synthetic cannabinoids. They contain other compounds like 3,4-methylenedioxypyrovalerone, which is a common name for methalone. If you examine the name of that compound—3,4-methylenedioxypyrovalerone—it is very similar to 3,4-methylenedioxymethamphetamine, which is "ecstasy," or MDMA. So, when you are looking to control these compounds, we are not talking about legitimate bath salts. We are talking about something that has taken on the street name "bath salts." That is how they are packaged and labeled in order to make them a more legitimate product. You are going to be buying those types of materials at convenience stores and head shops. I have a particular sample that was bought at a convenience store directly across the street from a middle school in Reno.

Assemblyman Sherwood:
So, to close the loop on this, what is the practicality and usability of any of these compounds for anything other than getting high?

Diane Machen:
The synthetic cannabinoids are what is being addressed here under A.B. 339. The bath salts are being addressed in a different venue of the legislative session, and they are as much of an issue right now in many parts of the United States. For both the synthetic cannabinoids and those things called "fake cocaine" or "bath salts," they have no legitimate pharmaceutical use to my knowledge. The synthetic cannabinoids were developed looking for things that would have legitimate pharmaceutical use, and they either did not have the desired effect the manufacturers were looking for, or they had too many other side effects, that they were of no value. They have been abandoned since then. This particular professor is looking at various modifications of those molecules to see if he can find something. Many states have taken action on these synthetic bath salts. You can actually die from consuming those bath salt compounds such as 3,4-methylenedioxypyrovalerone.

Chairman Horne:
I am going to stop you right there. You are giving my secretary a headache. He has to transcribe all this later and put it into the record. Also, it would be helpful if you could direct him to a place where all these compounds are listed. None of us up here can spell them either.

Diane Machen:
Many of these products are listed on the Internet. You will find a wealth of information.

Chairman Horne:
Are there other questions? I see none. Thank you very much, Assemblyman Ellison. Is anyone here wishing to testify in favor of A.B. 339? Is there anyone in Las Vegas? Is there anyone there, Mr. Segerblom?

Assemblyman Segerblom:
There is no one here.

Chairman Horne:
We will move to the opposition. Is there anyone opposed to A.B. 339? Ms. Gasca.

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:
Good morning, Mr. Chairman and members of the Committee. We testified in opposition to the companion bills in the Senate, both Senate Bill 224 and Senate Bill 228. Senate Bill 228 mirrors this bill in its entirety. Senate Bill 224 was regarding the "fake cocaine" also known as "bath salts."

We are not here to deny that the abuse of substances is problematic. We certainly are not medical experts, nor are we public health experts. Clearly, the misuse or abuse of any substance that forces a person to pay a visit to the hospital is problematic. However, there are many different substances out there that people use and abuse. We tend to see these kinds of things go through trends, such as paint thinners and airplane glue. Now, we have these synthetic compounds.

As Ms. Machen noted, this is a game of catch-up, and we are always behind as a state. There is really very little evidence to show that we would ever be able to catch up, and, as such, we are finding ourselves consistently in a spot where we are just reaching out in order to say, "Oh, wait a minute. You should not do that," when really we should be looking more proactively in the long-term to educate our youth about substance abuse and the effects on their lives. I think that for far too long we have abdicated our responsibility to our youth to have frank conversations about the use and abuse of drugs and the physiological and psychological effects. Instead, we just rely on saying, "That is illegal. Do not do it." We do not equip them with the tools and the responsibilities in order to respond to those substances out there.

In the digest of A.B. 339, you will see a list of the *Nevada Revised Statutes* (NRS) to which, if this were to move forward, the substances listed therein would then apply. *Nevada Revised Statutes* 453.321, for example, prohibits the attempt to barter or give away a controlled substance listed in Schedule I. That amounts to a B felony, which provides for a penalty of one to six years in prison. *Nevada Revised Statutes* 453.322 is possession with the intent to give away or barter even just the chemical compound itself. The penalty for that is 3 to 15 years. *Nevada Revised Statutes* 453.336 is unlawful possession not for the purpose of sale, and it is an E felony with a penalty of one to four years. *Nevada Revised Statutes* 453.337 is a D felony with a penalty of one to four years. Section 3385 of Chapter 453 of the NRS is trafficking, as Ms. Machen noted. That is for the possession of four grams or more. That is a B felony with a penalty of one to six years. If you compare that to NRS 453.339, marijuana trafficking, the comparable offense is essentially the same as if you were found guilty of trafficking up to 2,000 pounds of marijuana.

Finally, NRS 484C.110 is in regards to offenses of driving under the influence of alcohol or drugs. If these compounds were to be classified as Schedule I, their ingestion and driving under their influence would fall under this section. From our perspective, there are many different Schedule I drugs that fall under there, and they are essentially categorized by the level of metabolites in your system.

A lot of these are very arbitrary, and I had the opportunity to speak with Ms. Machen about that in general. Most of the time, those levels of metabolites have actually no bearing on whether a person is indeed under the influence or not. So, by adding this into Schedule I and into all these types of existing laws, we see an opening of a "can of worms." That is the last thing that we want to do. We are trying to prevent people from ingesting these substances. I think, rather than opening this type of box, we need to be looking more at education about these issues in a broader sense so that people can be better prepared to deal with their issues rather than rely on abusing substances.

I appreciate the thoughtful consideration of this. I also want to note that there is a bill out there that also seeks to respond to, I believe, the "digestion" of the Senate Judiciary Committee on both S.B. 224 and S.B. 228. That was to rely a bit more heavily on the Board of Pharmacy's role in this. They were present at the Senate Judiciary hearing, and the conversation was a little more robust. I think A.B. 339, S.B. 224, and S.B. 228 are certainly not the best way to proceed to effectuate the most responsible public policy response to the use and abuse of substances.

Chairman Horne:
Thank you, Ms. Gasca. Mr. Sherwood has a question.

Assemblyman Sherwood:
Ms. Gasca, I appreciate where you are coming from on your analogy about paint thinners. As a parent, I appreciate the fact that we have a law that says buckle up. It is a secondary offense, but it is the law. I can tell my kids, "Click It or Ticket." We do not have to say, "If you do not, you are going to go through the windshield, and you can experiment with that."

So, in the absence of legitimate uses, and I have found out there is no legitimate use for these compounds, why would we not put it in statute that says, "Click it or ticket?" That may be considered a rhetorical question.

Rebecca Gasca:
I think that it certainly does have rhetorical value, but it also has a tangible value. I will rely on my earlier testimony when I said that we are always playing catch-up. If we categorize this as a Schedule I drug, next year they will come

back with something else. Even if you decide to move forward with it as a class, guess what? They will create another class. We have lost the war on drugs. Even though this is not a common drug, or historically speaking, has not been—it is not one you can grow—it is clear: People use and abuse substances, and no matter what we do, we will always be playing catch-up. I think that is the most important part of "digesting" when you move forward with making a substance illegal. I just do not see how this bill as drafted is going to have the intended effect. Certainly, it is an attainable goal to make sure that people are not abusing these, but I do not see that this bill would achieve that.

Chairman Horne:
Do you have a question, Mr. Hammond?

Assemblyman Hammond:
Yes, thank you, Mr. Chairman. Ms. Gasca, I see your point. Every day at school, kids come up to me and say, "We heard that you can put banana peels in the microwave oven and get high that way." I ask them, "Really? Where did you find that out?" I do not know who tells them that or talks about those things, but the students are all looking around for banana peels. Obviously, this is not good. It is not good to have this product out there. For me, it seems like the best way to "kill something off" like this is to regulate it. I do not think you touched on that. Would you see anything that you might be able to support to get this product off the shelves, especially those that are right across the street from a middle school?

Rebecca Gasca:
Actually, I would support the legalization and regulation of any controlled substance. I think that certainly would be the best opportunity to address that issue.

Chairman Horne:
Is that your personal support, or that of the American Civil Liberties Union (ACLU) of Nevada?

Rebecca Gasca:
The ACLU.

Chairman Horne:
Are there any other questions? I see none. Are there any questions from Las Vegas? I see none. Thank you, Ms. Gasca. Is there anyone else here wishing to testify against A.B. 339? Is there anyone in the neutral position? In Las Vegas? I see none. Thank you again, Mr. Ellison. Do you have a final

statement on A.B. 339 for the record before I close the hearing? I like to give that courtesy to our members.

Assemblyman Ellison:
Yes, Mr. Chairman. One of the things that we are trying to address and focus on is some of these stores that are selling these products. You are correct about the packaging. You go into a store right now to buy incense, and it is selling this product. They are selling $30,000 to $40,000 worth a month. So, it is not just kids that are ingesting this material. It is a large part of the adult population, too. But I think by passing this bill, we can address the stores that are selling these and possibly discourage a lot of this. Thank you.

Chairman Horne:
Thank you, Mr. Ellison. I am going to close the hearing on A.B. 339 and bring it back to Committee and open the hearing on Assembly Bill 459. Hello, Mr. Perkins.

Assembly Bill 459: Makes various changes relating to gaming enterprise districts. (BDR 41-1122)

Richard Perkins, representing Wynn Las Vegas:
I am here to support A.B. 459. As Yogi Berra said, this is "déjà vu all over again," because not only are we here on a Saturday, but we are also dealing with gaming enterprise districts.

Mr. Chairman, the passage of Senate Bill No. 208 of the 69th Session occurred in 1997 and was in response to the proliferation of neighborhood gaming primarily in Clark County. The issue was a very hot topic back then. There were neighborhood casinos popping up everywhere. What Senate Bill No. 208 of the 69th Session did was to create gaming enterprise districts and restrict where casinos could be located. It required casinos to be built in gaming enterprise districts which have to be 500 feet away from residential property and 1,500 feet away from a school or church unless within 1,500 feet of the centerline of Las Vegas Boulevard. So, the main gaming corridor on Las Vegas Boulevard was 1,500 feet on either side.

I sort of picked my brain about that discussion when I participated in it in 1997, and I, for the life of me, cannot tell you why we settled on 1,500 feet. As many of you know, there is a lot of area beyond 1,500 feet of Las Vegas Boulevard that is extraordinarily suitable for gaming, but I am sure it was just part of the negotiations that occurred in 1997 to pass that bill.

Last session, there was also a gaming enterprise district bill that came out of this house, and many of you on this Committee might remember that discussion. If came out of the Assembly with 40 votes in favor, 1 against, and 1 excused. In essence, because it was much more comprehensive than the bill before you and there were additional amendments to that bill, and it gained opposition, it just sort of collapsed under its own weight while it was being considered by the Nevada Senate.

There is a description on section 1, subsection 2 of Assembly Bill 459 that expands the current gaming enterprise district represented by the map (Exhibit J). I suspect that is also on the Nevada Electronic Legislative Information System (NELIS) and has been made available to the public. It is in essence the Wynn Country Club Golf Course. That golf course is beyond the 1,500-foot level. This bill would expand the gaming enterprising district from where the Wynn and Encore are right now to the east. So, if you go east on Desert Inn Road to Paradise Road, south on Paradise Road to Sands Avenue, and west on Sands Avenue back to the gaming enterprise district, you will have circumnavigated the proposed area. That is all this bill does.

There are two conflicts based on the current gaming enterprise district requirements. One is the Guardian Angel Cathedral, which is across Desert Inn Road from the property. If you look at the map on NELIS, where it says, "Las Vegas Plaza Shopping Center" is where that church is. It is important, I think, to note that that church is wholly within the gaming enterprise district as it currently exists. The other conflict is an apartment complex on East Twain Avenue, east of Paradise Road and north of East Twain Avenue. It is a fairly small apartment complex. The residential requirement would preclude that bottom corner of this property from being used for gaming.

All the land that we are talking about is already zoned H-1, which is the zoning required for high-density resort development. That zoning was created by Clark County, but it is really not of much use without the bill before you to expand the gaming enterprise district.

I do not want to sell the Committee short in terms of history or the need for this bill, but I would be happy to try to answer any questions.

Chairman Horne:
Mr. Kite.

Assemblyman Kite:
Having been a county commissioner and dealing with gaming overlays many times, is there nothing that the local government can do about approving or disapproving this particular proposed expansion?

Richard Perkins:
It is my understanding, based upon Senate Bill No. 208 of the 69th Session, and with the exceptions of the church and the apartment complex, that without this bill, that gaming could not be placed on that site.

Assemblyman Kite:
Thank you.

Richard Perkins:
I apologize to the Committee for involving the Legislature in land use decisions, because those are typically local government issues, but because of the action that this body took in 1997 and the laws that currently exist, it is before you again.

Chairman Horne:
Mr. Carrillo.

Assemblyman Carrillo:
Mr. Perkins, when it comes to the 1,500 feet, I know for a fact that there is a condominium that is on the north side of East Desert Inn Road and west of Paradise Road. I believe it is called The Metropolis. Does that fall within that 1,500 feet? Or is it 500 feet from housing?

Richard Perkins:
In our research, the only two exceptions that we found were the church and the apartment complex I mentioned. I certainly will do some additional research and look into your question to make sure that there is nothing else within that 500-foot residential requirement.

Chairman Horne:
Follow up, Mr. Carrillo?

Assemblyman Carrillo:
I state that because I did some work on The Metropolis, and one thing that it states on its sell point is that it is “located just off the Strip, overlooking the Wynn Golf Course.” That is obviously something that is stated; so if you could get some more information on that, I would appreciate it.

Richard Perkins:
I would be happy to do that.

Chairman Horne:
Mr. Segerblom.

Assemblyman Segerblom:
Thank you, Mr. Chairman. This came up two years ago. I strongly opposed it, but it was because they had it up and down the Strip, but it actually included land on the Strip from Sahara Avenue to Charleston Boulevard, which was in my district. We were trying to keep a residential neighborhood there. But, I think this is very tailored to the one particular property and that church, which obviously was built knowing it was right on the Strip. As long as it just stays to this piece of property, I would not oppose it.

Chairman Horne:
Thank you, Mr. Segerblom. Mr. Daly.

Assemblyman Daly:
Is this the final deal, or is this enabling? Would Clark County have to take action separately? You are right. Usually land use issues are left to the counties and the cities. I do not want to muddy the water. Is this enabling, or is the County Commission going to have to go through its normal process of public hearings and public comments? The church and the people from the apartment building all get their say at the time of the development.

Richard Perkins:
All of those processes have to be gone through. All passage of this bill does, is permit the County to have the dialogue and for the owner of the property to submit those applications for additional gaming venues. So, yes is the short answer. All the residents and business owners in that area would have the opportunity to comment.

Chairman Horne:
Are there any other questions on A.B. 459? I see none. Does anyone here wish to testify in support of A.B. 459? In Las Vegas? We will move to the opposition. Does anyone present wish to oppose A.B. 459? In Las Vegas? Is anyone here or in Las Vegas in the neutral position? Seeing none, I will close the hearing on A.B. 459. Thank you, Mr. Perkins.

The last bill of the day is Assembly Bill 564.

Assembly Bill 564: Makes various changes to allow for the use of the most recent technology by various business associations, corporations and other entities in carrying out their powers and duties. (BDR 7-891)

Who is presenting A.B. 564?

Scott Anderson, Deputy Secretary of State for Commercial Recordings, Office of the Secretary of State:
Good morning. With me today is Chief Deputy Secretary of State Nicole Lamboley. It is my pleasure to present testimony on behalf of Secretary of State Ross Miller on A.B. 564. This bill proposes several changes to Title 7 of the *Nevada Revised Statutes* that will allow Nevada to become a leader in digital corporate governance.

As technology rapidly develops, these provisions will give Nevada entities the ability to conduct corporate business, using the latest technology and methods of communication, rather than being required to meet face to face or telephonically. Technology such as videoconferencing, "Skyping," Google Wave, web seminars, and web meetings offer methods of communication not available until recently.

As these technologies advance, Nevada entities should have the ability to use them in their formation and governance documents as well as in conducting corporate meetings and other governance business. The provisions of A.B. 564 also give the Secretary of State the ability to provide certain basic resources to those desiring to form entities to streamline the formation process.

This discussion started a couple of years ago when Vermont first proposed the idea of digital governance. As shown by the *CFO Magazine* article provided to you yesterday, Vermont has yet to implement the digital formation provisions as their Commercial Recordings Division has been slow to adapt to technology.

Nevada is well-poised to take the lead in this area as we continue to develop and offer online processes for document filing. This is also perfect timing, as we are soon to deploy Phase 1 of the Nevada Business Portal.

Sections 1, 4, 5, 6, 7, 10, 11, 14, 15, 16, 17, and 18 of the bill provide regulatory authority to the Secretary of State to define certain terms to allow entities to carry out their powers and duties through the use of the most recent technology.

Sections 2, 3, 8, and 9 allow certain meetings to be conducted through electronic communications, videoconferencing, or other available technology through simultaneous or sequential participation.

Sections 12 and 13 allow for limited liability company (LLC) operating agreements to be in any tangible or electronic form, as opposed to strictly written form. It also allows the Secretary of State to make available a model operating agreement for use by, and at the discretion of, an LLC.

Section 19 provides the Secretary of State the regulatory authority necessary to carry out the provisions of this act. I am happy to answer any questions.

Chairman Horne:
Thank you, Mr. Anderson. Are there any questions for Mr. Anderson? Mr. Daly.

Assemblyman Daly:
Thank you, Mr. Chairman. In section 2, the old language reads, ". . . persons participating in the meeting can hear each other." Why did you have that in the old language where you are not trying to define "communicate?"

Scott Anderson:
The thought behind that is that now there are so many different types of communication other than telephone and face-to-face meetings that may not require you to be able to hear the person, such as when you are looking at a web seminar. You may have information that is typed in and sent back in typed electronic form versus hearing what the person actually has to say through logins and other types of communication.

Nicole Lamboley, Chief Deputy Secretary of State, Office of the Secretary of State:
Mr. Chairman, if I might add to that. It is similar to what is done with online education, whereby students will login to a professor, and they will type their questions, and they will have an online dialogue. Everybody is seeing the question and the professor's response, but they are not necessarily hearing it. That was meant to give us the ability to adapt to all these emerging technologies. Generally, they occur faster than we can write legislation.

Chairman Horne:
Much like the creation of synthetic drugs. Are there any other questions? I see none. Are there any in Las Vegas? Does anyone here wish to get on the record in support of A.B. 564? In Las Vegas?

We will move to the opposition. Is there anyone here or in Las Vegas? Is there anyone neutral? Seeing none, we will close the hearing on A.B. 564 and bring it back to Committee.

That concludes the hearings of the bills for today. Now, we will move into our work session document. Mr. Ziegler.

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Members, we have one bill on work session today. It is Assembly Bill 196.

Assembly Bill 196: Revises provisions governing the collection of fines, fees and restitution owed by certain convicted persons. (BDR 18-557)

There are documents posted on the Nevada Electronic Legislative Information System (NELIS) from the Office of the Controller. This morning, we posted a second amendment (Exhibit K) from the Office of the Controller. It is also on NELIS. It is at or near the bottom. It is the very last item listed under today's hearing. All three amendments are in front of you for consideration today.

[Mr. Ziegler read from work session document (Exhibit L).]

Regarding the two amendments from the Controller, one of them deals with a reciprocal collection agreement with the federal government. The other, which is the one that we inadvertently omitted and put back in this morning, simply authorizes the Controller, through interlocal agreement, to collect on behalf of any governmental entity in the state. On the one that was added today, I would point out that that actually was in front of the Committee on the day of the hearing. Thank you, Mr. Chairman.

Chairman Horne:
Thank you, Mr. Ziegler. Are there any questions about A.B. 196 and its proposed amendments? Basically, we are trying to find a mechanism with which to collect additional dollars from those offenders who have financial obligations to the court that we currently are not collecting. This would be done through the Office of the Controller. Mr. Hammond.

Assemblyman Hammond:
Thank you, Mr. Chairman. This is a lot of material real quick. There are three amendments, one of which is coming from the Controller. Is the Controller okay with the other two amendments that were proposed?

Chairman Horne:
I believe that everyone was okay with the amendments. I see affirmative nods from the courts and from the Controller's Office. Mr. Kite.

Assemblyman Kite:
Could I ask the people from the Division of Parole and Probation whether they are okay with one or all three? Thank you.

Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety:
We are familiar with all three amendments, and we do support them.

Chairman Horne:
Is there anyone else with a question? I would entertain a motion.

> ASSEMBLYMAN SHERWOOD MOVED TO AMEND AND DO PASS ASSEMBLY BILL 196.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN BROOKS AND SEGERBLOM WERE ABSENT AND EXCUSED FROM THE VOTE.)

That concludes our business for today. Thank you everybody for coming this Saturday morning and afternoon. We are adjourned [at 2:01 p.m.].

RESPECTFULLY SUBMITTED:

_____
Jeffrey Eck
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 9, 2011 **Time of Meeting: 10:10 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 272	C	Assemblywoman Lucy Flores	U.S. Department of Justice Article
A.B. 272	D	Esther Rodriguez Brown	Written Testimony
A.B. 272	E	Esther Rodriguez Brown	Letter to the Chairman
A.B. 272	F	Rebecca Gasca	Written Testimony
A.B. 272	G	Sam Bateman	PowerPoint Presentation
A.B. 339	H	Elko County Board of Commissioners	Letter of Support
A.B. 339	I	Diane Machen	Photographs
A.B. 459	J	Richard Perkins	Map
A.B. 196	K	Kim Wallin	Amendment
A.B. 196	L	Dave Ziegler	Work Session Document