MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
February 19, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Thursday, February 19, 2015, 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/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Jo Lee Wickes, Deputy District Attorney, Juvenile Division, Office of the Washoe County District Attorney
Susan Roske, Chief Deputy Public Defender, Juvenile Division, Clark County Public Defender's Office
John T. Jones, Jr., representing Nevada District Attorneys Association
Regan Comis, representing M + R Strategic Services
Scott L. Coffee, Attorney, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice
William O. Voy, Judge, Family Division, Eighth Judicial District Court
Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Office of the Clark County District Attorney
Frank W. Cervantes, Director, Department of Juvenile Services, Washoe County
Brian Vasek, representing Clark County Public Defender's Office
Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada

Chairman Hansen:
[Roll was called.] We have three bills on the agenda today. We are going to take them out of order, and we will start with Assembly Bill 138.

Assembly Bill 138: Enacts a juvenile competency standard. (BDR 5-188)

Jo Lee Wickes, Deputy District Attorney, Juvenile Division, Office of the Washoe County District Attorney:
Susan Roske will be assisting me today from Clark County. Prior to Ms. Roske summarizing and explaining Assembly Bill 138, I would like to give the Committee a brief overview of why the juvenile justice community believes that this proposed legislation is so critical to our state. I will also provide a brief overview of how it was drafted.

This legislation is critical because in the last several years, almost every judicial district in Nevada has tackled the questions that arise when a juvenile or a child is charged with violating Nevada law, and he appears to be incapable of fully participating in the court process. Juveniles who may be legally

incompetent present much different challenges than adults who are legally incompetent. The juveniles or children typically are unable to understand or participate in the court process due to a lack of maturity, lack of development, cognitive impairments, and some mental health challenges. Currently, the juvenile court judges, attorneys for the prosecution, and defense attorneys rely upon a 1979 Nevada Supreme Court case and a patchwork of existing juvenile statutes. They have fashioned practical solutions in each judicial district to address these types of cases.

Statewide efforts began in 2007 or 2008 to try to find a solution to these problems. Through the efforts of the Nevada Supreme Court's Commission on Statewide Juvenile Justice Reform and its many members, we believe we have developed a commonsense procedural framework which addresses fundamental fairness and the realities of limited resources. Additionally, it recognizes community safety, the unique aspects of juveniles and children, and the overall purpose of juvenile court to balance the needs of the child with the best interest of the community and the state.

The intent of A.B. 138 is to protect the constitutional rights of juveniles and children appearing in delinquency courts throughout Nevada; to provide the juvenile court with procedures ensuring the flexibility necessary for the court to address the unique needs of those juveniles and children, which may continue for an indefinite period of time; to protect public safety; to allow each juvenile to fully participate in the evaluation process without fear that his statements will be used against him for purposes other than determining whether the juvenile is competent to participate in court proceedings; or for the court to enter dispositional orders allowing for treatment and evaluation. There is one exception. If the juvenile uses his statement for some other purpose, the prosecution may also use his statement to rebut those purposes.

I would like to tell you about how this legislation was drafted. Through the Commission on Statewide Juvenile Justice Reform, Justice Hardesty and Justice Saitta convened a subgroup which included Judge Egan Walker, a family court judge in Washoe County; Judge William Voy, a family court judge in Clark County; Assemblyman Ohrenschall; Brigid J. Duffy, Chief Deputy District Attorney for the Juvenile Court in Clark County; Ryan Sullivan, Chief Public Defender for Washoe County Delinquency Court; Susan Roske, Clark County Chief Public Defender, and me. We also consulted with Judge Steve L. Dobrescu of the Seventh Judicial District Court, and Dr. Joseph Haas, Psychologist, Washoe County Department of Juvenile Services. Some of our members also contacted psychologists in the different judicial districts who are currently performing these evaluations. There are two national publications that we utilize. They are *The Models for Change*

by the John D. and Catherine T. MacArthur Foundation, and the guide *Competency to Stand Trial in Juvenile Court: Recommendations for Policymakers* by the National Juvenile Justice Network which was published in November 2012.

We have studied the statutes of several other states. We surveyed all of the judicial districts to learn how many competency evaluations they were already conducting, how those competency evaluations were being paid for, and the average cost of the evaluations. We responded to the concerns voiced by a diverse group of juvenile justice participants including judges, county probation departments, defense attorneys, and prosecutors.

I believe that A.B. 138 has broad-based support from Clark County, Washoe County, and the rural judicial districts. We do not believe there is a fiscal impact as these evaluations are already being conducted, and each judicial district is already paying for them. In April 2014, the Commission on Statewide Juvenile Justice Reform unanimously approved this proposed legislation.

I would be happy to answer any questions from Committee members. Ms. Roske will summarize and explain the provision of A.B. 138.

Assemblyman Ohrenschall:
I was privileged to work on the subcommittee. What impressed me the most was seeing the public defenders, the prosecutors, and the judges all work together in the best interest of the children.

Susan Roske, Chief Deputy Public Defender, Juvenile Division, Clark County Public Defender's Office:
As noted by Ms. Wickes, practitioners in juvenile courts have struggled with the appropriate procedures to use in order to review whether a child is competent to stand trial. The due process clauses of our state and federal constitutions require that courts ensure that a child is competent to participate in the court process. [Read from prepared written statement (Exhibit C).]

What is not noted but is clear in the *Nevada Revised Statutes* (NRS), the court only retains jurisdiction of the child until the age of 21. At the age of 21, if the child has not attained competency, the petition would be dismissed.

As noted by Ms. Wickes, there should be no fiscal impact on A.B. 138. We surveyed all of the judicial districts in the state. The courts are already conducting competency evaluations and arranging for payment of the evaluations locally as mandated by the *U. S. Constitution*, the

Nevada Constitution, and by case law. Thank you very much. If you have any questions I would be happy to answer them.

Assemblyman Wheeler:
I do not see anything in the bill that shows if there are multiple infractions, whether the child be found competent for one, and incompetent for another. For instance, they may understand one was wrong but did not understand the other was wrong. If so, is it then split? What is the procedure?

Jo Lee Wickes:
That may depend on the judicial district. In Washoe County, we can have one petition that alleges various acts. We have had such cases in our county. Because of the serious nature of some felony charges, a young man was not competent to understand the complexity involved in certain charges, but he was deemed to be competent to participate in court proceedings for violation of his existing probation and some misdemeanor offenses. We proceeded to a plea hearing on those offenses that he was competent to participate and understand. We simply held in abeyance, or entered orders to address, treatment needs on the felony charges that he was not capable of understanding and participating in. It is possible to answer your question by saying that a juvenile can be legally competent to address some behaviors and legally incompetent to understand the complexity of more serious behavior.

Susan Roske:
I just wanted to add that there may be two different issues as well. Whether the child understands right and wrong is a completely different issue than whether they are competent to stand trial. Whether they understood that what they did was right or wrong, the court has to make a finding of competency for any child between the ages of 8 to 14.

Assemblyman Nelson:
Section 3 says, "if doubt arises as to the competence of a child...." Does that refer to doubt in the mind of the judge, prosecutor, or defense attorney?

Jo Lee Wickes:
Doubt arises on behalf of anyone who is involved in the juvenile justice process. It is often raised by a defense lawyer. It is sometimes raised by a prosecutor or a probation officer who has quite a bit of contact with the young person. Doubt can also be raised by the judge, or anyone involved in the process who has concerns about the child's competence.

Assemblyman Nelson:
I have read the letter from Kimberly Larson (Exhibit D), and I want to make sure that this examination is only for the purpose of making the determinations that are in section 9, subsection 1, paragraphs (a) and (b), unless it falls under subsection 2, where he or she is using it for a different purpose. Is this correct?

Jo Lee Wickes:
You are correct. I would like to explain that the word "disposition" has a very broad and somewhat specialized meaning in juvenile cases. The statutes that already exist in NRS Chapter 62E outline what the court's abilities and limitations are for entering dispositional orders. In NRS Chapter 62E, our court already has the ability to order psychological, psychiatric, substance abuse, and sex offender evaluations on young people that come before the court. The court also has the power to order treatment to address those underlying issues. Disposition is very broadly defined in juvenile courts. The overarching goal of the court is to balance and consider the best interest of the child and the best interest of the state and the community. These evaluations are to determine competence, but the evaluations will also outline any issues that the evaluator believes should be addressed from a therapeutic and treatment point of view, if the court has asked the evaluator to take a look at those issues. Often these children and juveniles need treatment for underlying issues despite the fact they may not be cognitively or developmentally ready to deal with the complexities of participating in a court process. We believe that section 9 balances the interest of maintaining the constitutional rights of the child, limiting the use of those statements, and allowing him or her to fully participate in the evaluation. It would not be used against that child unless the child raised those issues for another purpose. If other issues were raised, that information would be more fully developed.

Assemblyman Thompson:
Thank you both for the presentation. It sounds like you have all the key players at the table. I do have a question about section 7, subsection 2, paragraphs (a) through (e). Say that a child is deemed as incompetent and a treatment plan is developed for the child, who is responsible to ensure the child is connected to services? Is there a social worker or case manager assigned to the child?

Jo Lee Wickes:
The juvenile court attains jurisdiction or power when the district attorney files a petition. If competency is raised, we go through this process. The expert provides a written report to the court and the court then determines if the child is incompetent. In Washoe County, we always ask those evaluators for some guidance in the child's underlying needs. That child is then assigned to a probation officer. Once information is received by the probation officer,

the prosecutor, the defense attorney, the parent, and the child, the court enters appropriate treatment orders. Our probation department ensures that the court's orders are carried through. The probation department maintains an open file and assists the family in securing those necessary services. We do have incompetent youth whose needs are so great that they are actually placed in residential treatment pursuant to the juvenile court's order. Most of the time those treatment episodes are paid for through Medicaid funding. Our probation department works with the family hand in hand to ensure the child is able to access the required services which were ordered by the court.

Assemblyman Thompson:
If I hear you correctly, it is the probation officer's responsibility to ensure these services are given to the child or the parents. There could be services needed for the father or mother to make it whole, because this issue may contribute to the incompetency. Is that correct?

Jo Lee Wickes:
That is correct.

Susan Roske:
In explanation, most juvenile justice systems have intake probation officers who supervise cases where a child does not already have an assigned probation officer. The juvenile court does have jurisdiction over parents to order parents into services, parenting classes, et cetera. The probation department in Clark County, and in most systems, has probation officers that work with children who are not presently on probation, ensuring that they get the services they need and that the parents are following through with these services.

Assemblywoman Seaman:
I would like you to clarify that in section 12, where it says "if a juvenile is determined incompetent," who has the supervisory rights? In section 12, it says the juvenile court may not.

Susan Roske:
If a child is incompetent, this means they cannot be found guilty and adjudicated delinquent for the crime that they are charged with. The court has jurisdiction while a petition is pending. In adult terms, a more understandable language would be "convicted of this offense." That is all that section is saying.

Assemblywoman Seaman:
Section 12, subsection 2, says they cannot be placed under the supervision of the juvenile court pursuant to a supervision and consent decree.

Susan Roske:
Nevada Revised Statutes 62C.230 allows for a child who admits his or her guilt to be placed in informal supervision, which is similar to a diversion program, resulting in dismissal of the charge. An actual adjudication of delinquency is never actually entered, but they are still complying with court orders. This is just a term of art that we use in our system for an informal supervision and consent decree.

Assemblyman Gardner:
Section 4 seems to be protection from the defense counsel or someone else using this as a delay tactic. I am wondering if there are any penalties for someone who falsifies documents or puts out facts that are not true while trying to use this as a delay tactic. Additionally, I would like to address section 12. You talked earlier about having a bifurcation whereas someone can be competent on some issues and incompetent on others. I just want to make sure that if you are competent on some issues, section 12 does not bind you because you are incompetent on other issues.

Jo Lee Wickes:
Assembly Bill 138 says that anybody who is raising the issue of competency needs to state the factual basis for that claim. Section 4 specifically allows either party to call other experts if they disagree with the opinion of the first evaluator. There are provisions in the statute that prevent delay. I believe that juvenile court judges have the power to move things forward if they believe there is not an actual basis to proceed with a competency evaluation. Those protections are really more inherent in the power of the juvenile court. With regard to section 12, you bring up a very important point. What happens when we have those proceedings where someone is competent in one issue and incompetent on the others? I have to say that despite years of vetting, we probably did not actually think about that exact scenario. I think this language is written in a way that you could proceed to be adjudicated on those issues for which you are competent. If the Committee is uncertain, I certainly would be willing to consider language that would clarify those types of situations.

Assemblyman Ohrenschall:
Regarding section 9, subsection 1, paragraph (b), I would like clarification that we are not talking about anything that would end up as an adult criminal case. What about the scenario where a child might be certified up? Could the information end up as part of that record?

Susan Roske:
There could be a situation where the issue of competency is raised prior to certification. I share your concerns that a child may be forced to waive his

Fifth Amendment rights in talking to an evaluator prior to entry of a plea or the certification hearing, with those statements following them into the adult system. We need to be very clear that these are protected and cannot be used against them. The child does have Fifth Amendment rights and has a right to be competent at a certification hearing.

Jo Lee Wickes:
With regard to whether or not a statement can be used by a child who raises competency in a juvenile court proceeding and is then found competent and certified into the adult criminal process, there are statutes in the adult criminal process regarding how the statements in competency evaluations are used. I think this would provide all of the constitutional and statutory protections needed.

Assemblyman Elliot T. Anderson:
I have a technical question about section 5, subsection 2, paragraph (a). I was wondering why you chose the specific subfield of child psychology? I am not sure if it was intentional, but educational psychology is missing. Did you have a specific finding you were going for?

Jo Lee Wickes:
In surveying the different judicial districts about who they were utilizing and what access they had to resources, we chose those words. There is some training in Nevada for these professionals who prepare competency evaluations. Lake's Crossing Center has training. Clark County has been able to access national experts who provided training. We did not find any judicial districts that were using anyone with more of an educational background. That is probably why the language was chosen.

Assemblyman Nelson:
I would like to follow up on Mr. Ohrenschall's question to ensure that the things that come out are only to be used for deciding competence, and the Fifth Amendment rights are preserved. I am concerned with section 5, subsection 4, where it looks like there could be three or more experts performing these evaluations. I just want to make sure that every expert witness is bound by the same limitations.

Jo Lee Wickes:
Every expert witness is bound by the same limitations. Within the juvenile court system the evaluation will be used to determine if the child is competent. It also could be used to see what types of treatment might be necessary for the court to address. One of the things we did was to leave the number of experts open because the rural districts do not have as much access to people who are

adept at evaluating the juveniles. We did not want to duplicate what happens in the adult criminal system where two experts are appointed on each case. We wanted to give the judicial districts the flexibility they needed to meet the needs of their community and to deal with the realities of resource availability.

Chairman Hansen:
I do not see any further questions. Is there anybody else to testify in favor of A.B. 138?

John T. Jones, Jr., representing Nevada District Attorneys Association:
I would just like to express our support for this bill.

Regan Comis, representing M+R Strategic Services:
It was my organization that asked Kimberly Larson to please review the juvenile competency statute that is before you. She has been working in various stages for the last ten years. I would like to applaud Ms. Wickes and Ms. Roske, as well as the rest of the competency subcommittee who looked at this. Ms. Larson felt that the statute that is before you was an excellent and well thought-out statute. She did raise the same concern that Assemblyman Nelson has brought up, but I think we have clarified that on the record.

Scott L. Coffee, Attorney, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice:
I want to testify in support of the bill. I think it is a good idea, and we need some procedures in place. I just received a copy of it yesterday and was asked to review it. Juvenile justice is not at the center of my practice, but I am intimately involved in death penalty litigation in the adult system. With all due respect to Ms. Wickes, the sentiment that the adult system will simply take care of problems concerning confidentiality and the Fifth Amendment I think is wishful thinking. The adult system does not deal with it very well. The concerns expressed in section 9 are the concerns that I wanted to raise with the members of this Committee. There is no explicit provision that provides for privilege of the communication. The way it is set up, the state can ask for an expert and have unfettered access to a juvenile defendant. It is not clear that the Fifth Amendment would run headlong into the due process rights of a juvenile in this instance. Obviously, they have the Fifth Amendment right to remain silent and to not have statements used against them. That would have to give way to the right to be evaluated for competency.

I am looking at section 9, subsection 1, paragraph (b). I think the addition of some simple language, making a final disposition of the case in juvenile court, would address the concerns. As a practicing criminal defense attorney in the adult system, making a final disposition of the case is not clear to me. I can see

a situation where a juvenile would be certified as an adult, and someone would claim that the final disposition of the case would include trial in adult court. The statement would be admissible at that point. The general rule of client statements is once they are out they are out, and it is hard to put the cat back in the bag. I think the bill is a good one, but I think subsection 9 needs to include language that says it is limited for the purpose of making a final disposition in juvenile court; perhaps a sentence that says "statements and information gained during these evaluations should not be admissible against a defendant at trial." I think those are necessary. If they are not added you will end up with constitutional problems. I foresee problems down the road.

Chairman Hansen:
Thank you, Mr. Coffee. Just so you know, if you support a bill, it is typically 100 percent support. If you have an amendment, you are technically in opposition to the bill. At this point, we will change your testimony to being in opposition with a proposed amendment. We appreciate that, and I am sure there will be some efforts on behalf of the bill's sponsor to take your recommendations into consideration. Are there any questions for Mr. Coffee, at this time? Seeing none, thank you very much.

Is there anyone else in Las Vegas who would like to testify on the bill at this time? Seeing none, is there anyone else here in Carson City who wants to testify in favor? I see no one. Is there anyone else in the north or south to testify in opposition, or in the neutral position? I see no one. Before we close the hearing on A.B. 138, Mr. Ohrenschall, who served on this Committee, will make a statement.

Assemblyman Ohrenschall:
Because we are considering A. B. 138, which proposes to establish a juvenile competency standard, I would like to advise this Committee that Ms. Roske, who is the Clark County Juvenile Public Defender, is my supervisory team chief where I am employed as a Deputy Juvenile Public Defender at the Clark County Public Defender's Office. She testified earlier on this bill. I consulted with our Legislative Counsel and have determined that I do not have a conflict of interest with respect to A.B. 138 pursuant to Assembly Standing Rule No. 23. This bill clearly does not affect me any differently than any other practicing attorney in Nevada who represents juvenile clients in delinquency courts. Since I do not have a conflict of interest pursuant to Assembly Standing Rule No. 23, I will be participating in this discussion, and I do plan on voting on this bill.

Chairman Hansen:
At this time, we will close the hearing on A.B. 138. I will now open the hearing on Assembly Bill 113, and I understand that Judge Voy is in Las Vegas to present the bill.

Assembly Bill 113: Revises provisions governing the sealing of juvenile records. (BDR 5-444)

William O. Voy, Judge, Family Division, Eighth Judicial District Court:
Assembly Bill 113 is a cleanup bill. The bill comes out of the Commission on Statewide Juvenile Justice Reform that has been meeting for several years now. The various provisions clean up different aspects of the sealing and unsealing of juvenile records that are contained in Nevada Revised Statutes (NRS) Chapter 62. Some of the changes go back to 1971, and when we went through this, we were looking at language that was created back then. Of course, things have changed a little bit. I will briefly go through the highlights. We reviewed multiple state statutes regarding the sealing and unsealing of juvenile records before presenting A.B. 113. There were some detailed amendments made that you should have before you (Exhibit E). What we presented to the Legislative Counsel Bureau (LCB), and came out of LCB, looks a little different. I want to make sure the amendments are on the record.

Diane Thornton, Policy Analyst:
The amendments are on the Nevada Electronic Legislative Information System (NELIS).

Judge Voy:
The intent of this legislation is to provide uniformity among the courts regarding sealing records and to provide clear definition guidelines as to when juvenile records may or may not be sealed. It will clarify when a petition to seal records may be found and provides a list of factors the judge may consider when determining whether the child has been rehabilitated to the satisfaction of the juvenile court for the sealing of records for the child under the age of 21. It also allows for the records to remain public when fines, fees, and restitution have been converted to civil judgment.

In the current language, section 1 includes probation officers and chief parole officers. What we added to section 1 allows the subject minor to petition the juvenile court to seal the records at his or her eighteenth birthday, and before his or her twenty-first birthday. It is also citing many factors to be considered. Section 1, subsection 6, goes on to deal with the unsealing, or keeping unsealed, the record of a juvenile once they have turned 21 for the sole purposes of enforcing a judgment that was entered prior to his

twenty-first birthday as it relates to restitution. Senate Bill No. 106 of the 77th Session created the ability and power of the juvenile court to take restitution by juveniles and their parents to victims. Instead of having it terminate on their twenty-first birthday, it would allow that to be reduced to civil judgment to be forced by the victim once the judgment has been entered. Unfortunately, we failed to allow for the unsealing, or keeping unsealed, the record as it relates to the case caption in the child's name so that the judgment could actually be enforced. That provision allows us to be able to actually enforce what was granted to us by the Legislature last session.

Relating to NRS 62H.170, section 4 added language that allows the juvenile court to unseal records for the sole purpose of taking personal identifying information from those sealed records in order to conduct recidivism studies. It would allow the information to go to a central repository, such as the National Crime Information Center (NCIC), for research purposes only. It would verify whether or not the person, who is now an adult, has recidivated. This is very important and, to me, the most important part of the legislation. We currently have the ability to take sealed records, unseal them, and give the information to researchers without personal identifying information. That information is correlated and produced in study format. With the amendment to section 4, once the child reaches the age of 18 and leaves our system, we can track that child to ascertain whether or not they reoffended, so as to determine whether the program we are offering children is actually working. Currently, once they turn 18, we do not have the ability to track whether they have committed further crimes, especially in Las Vegas where a lot of people come and go. The ability to utilize that personal identifying information to track ten years out, in order to determine whether or not that person reoffended as an adult, is key to getting a handle on what we do in the juvenile world. To my knowledge, no other jurisdiction is actually following kids into their adulthood with the kind of accuracy that we would get. There are safeguards in the proposed legislation that would mandate that the information would stay within the clerk's office. The clerk's office is charged with keeping those records that are sealed to begin with. There would be no further dissemination of that information. The information would then be provided to the researchers without the identifying information to produce true and accurate recidivism studies for juveniles.

That sums up what is in A.B. 113. There is some minutia in here, and I am willing to take any questions you have.

Chairman Hansen:
Are there any questions for Judge Voy at this time? We may have one from Legal.

Brad Wilkinson, Committee Counsel:
Regarding the change on the bottom of page 1 and on the top of page 2 of the proposed amendment, you are striking the language that pertains to an event which occurred when the child reached 18 years of age. I am curious how that is supposed to work under the amendment. It is found in section 1, subsection 4, paragraphs (a) and (b), of the bill.

Judge Voy:
There were some last minute changes because of some confusion in the Legislative Council Bureau (LCB) draft. Susan Roske can probably address that particular change.

Susan Roske, Chief Deputy Public Defender, Juvenile Division, Clark County Public Defender's Office:
I was on the subcommittee with Judge Voy. We sent language to LCB with our intention, but the language came out a bit distorted. We sent the amendment yesterday. The way the statute presently reads, if a child meets the criteria of three years having passed since the last adjudication, the child has not been convicted of a felony or misdemeanor, and he or she has been rehabilitated to the satisfaction of the court, the juvenile court shall seal the child's juvenile records. We wanted to change that language because, theoretically, the child may be 13, 14, or possibly 12 years old, met the criteria, and petitioned the juvenile court to seal the records. The juvenile court has had some hesitancy in sealing records of children under the age of 18, although there have been several occasions where we did want to seal records for children under the age of 18. For example, if a 17-year-old is graduating from high school and is about to apply for college and scholarships, he or she would want to have the records sealed. Therefore, we bifurcated this section. If the child is under the age of 18, petitions to seal his records, and meets the criteria, the juvenile court may seal those records. The language here is "may" and not "shall."

If the petitioner child is over the age of 18, we want to keep the current language. If the child is over the age of 18, meets the criteria of being rehabilitated to the satisfaction of the court, and three years have passed, the court shall seal those records. That is the distinction that we were trying to make in this section.

Chairman Hansen:
Thank you for that explanation. We do have some questions.

Assemblyman Elliot T. Anderson:
Earlier in your testimony, you described this as a clean-up bill. On page 3, it looks like you are tying down the discretion of the court a little bit. There will have to be many specific factors in order to allow the juvenile to seal his or her records. Would it be fair to say that this might make it more difficult for a juvenile to get his or her records sealed?

Judge Voy:
No. Actually, the existing statute does not provide any clear guidance as to what the court should consider. We came up with these factors because as a committee, we thought they were appropriate things to consider. The language is "may." The court may consider all these factors or not consider some of those factors. It actually gives a guideline for the judge to make this decision. Under existing law, the guideline is very subjective. Accepting these factors and enacting such legislation would be telling the judiciary to consider these factors in determining whether to seal the records

Assemblyman Nelson:
Regarding the amendment proposed by the Supreme Court (Exhibit E), I am looking at the part on page 3, dealing with section 4, subsection 2, paragraph (e), subparagraph (1). The original language said the court could order the inspection of the records to perform bona fide outcome and recidivism studies. The additional language proposed added, "which may include the use of personal identifying information from sealed juvenile records to perform criminal background checks on persons that were adjudicated pursuant to this title." Does this mean that the court can allow inspection of these records to perform a criminal background check on that juvenile?

Judge Voy:
The existing statute allows the court to provide information to researchers to perform recidivism studies without personal identifying information. This is one half of the equation. The second half of the equation is having the information you are correlating, and then you are looking at if they reoffended. In most cases, we can only track them until they turn 18 years old. In my opinion, and many of my colleagues' opinions, that is not the end of the story. If they commit a crime on their eighteenth birthday, we do not know about it. This would allow us to go back and gather the personal identifying information from the same cases. For example, we currently have a recidivism study being performed here in Clark County by psychologists and psychiatrists on juvenile sex offenders. We took 1,000 cases dating back 20 years. The information was provided with only numbers from 1 through 1,000, representing each one of the children. The information is being correlated with 28 different factors. The end part would be taking those kids, 1 through 1,000, and utilizing their

personal information such as name, social security number, and date of birth. This information would be sent to NCIC, then we would get back the information to see if they reoffended. The reoffending information would then be provided to the researchers with the same numbers, 1 to 1,000, and no identifying information. They will collate the two together to determine the outcomes. The information that would be provided to NCIC comes from the clerk of the court who is the keeper of those sealed records to begin with. All that information would stay with the clerk of the court, be exchanged with the NCIC database, and then returned back to the clerk of court. That is the process that is contemplated by this particular amendment.

Chairman Hansen:
What is NCIC, for the record?

Judge Voy:
It is the National Crime Information Center. When a scope is run on a local citizen utilizing statewide or countywide data, the NCIC and the FBI are the keepers of those records. We have done some similar investigations, on the adult side with our drug court. These have been similar research projects with the feds. The FBI will allow such projects to occur under certain criteria. We felt that in order to have the clerk of the court interact with the feds to provide this information, we had to get approval from the Legislature. That is why we have this provision in the bill.

Assemblyman Thompson:
Are there any costs for a person to go through this process? As you know, costs are sometimes a hindrance for anyone to go through the process. If there are costs, can you share that with us?

Judge Voy:
Currently, what happens is the majority of kids are represented by the Public Defender's Office. There is no associated filing fee in the juvenile system. They do a pretty good job of keeping track of the kids and will seal records when necessary. From time to time, we have situations where someone wants to have the records sealed. We always refer them to Ms. Roske's office who brings those petitions to the court, and it does not cost anyone a dime.

Chairman Hansen:
I see no further questions. Thank you very much. Is there anyone else who would like to testify in favor of A.B. 113 at this time?

Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Office of the Clark County District Attorney:
I am here to testify in support of A.B. 113. I served on the subcommittee with Judge Voy, Ms. Roske, and several other members statewide. We believe that this bill captures the spirit of what our juvenile justice system is about. First of all, we are about public safety. In advance of that public safety, we want to assist kids in rehabilitation. If our youth have actively been rehabilitated, we believe they should be able to seal their records and move on with their lives. We ask you to pass A.B. 113.

John T. Jones, Jr., representing Nevada District Attorneys Association:
We are here in support of A.B. 113. I have proposed an amendment (Exhibit F). It is my understanding that the sponsors are accepting this amendment. It makes one small addition to section 4, subsection 2, paragraph (c). It adds the language "including the defendant", after the word "persons." To specify, records regarding a defendant could potentially be unsealed. I just noticed one error in the proposed amendment. The language "an attorney representing" should actually be stricken. Ms. Duffy and I are available to answer any questions you may have.

Chairman Hansen:
I see no questions. Is there anyone in Las Vegas who would like to testify in favor of A.B. 113? Seeing no one, is there anyone here or in Las Vegas to testify in opposition of A.B. 113? Seeing no one, is there anyone in the neutral position? [There was no one.] Mr. Ohrenschall, do you have any final words before we close the hearing?

Assemblyman Ohrenschall:
I would like to reference my earlier statement regarding my day job as a deputy public defender. Ms. Roske is Clark County's juvenile public defender, and she is my supervisor. I just wanted to make sure I mentioned that in reference to my earlier statement.

Chairman Hansen:
We will close the hearing on Assembly Bill 113 and open the hearing on Assembly Bill 124.

Assembly Bill 124: Revises provisions governing juvenile justice. (BDR 5-182)

Assemblywoman Olivia Diaz, Assembly District No. 11:
I am here to present Assembly Bill 124. Former Assemblyman Jason Frierson, as Chairman of the Interim Committee on Child Welfare and Juvenile Justice, broached this subject during the interim and collaborated with the Clark County

District Attorney's Office to come up with a commonsense approach to deal with children in this age group. In the bill, we are dealing with raising the minimum age at which a child can be adjudicated from age 8 to age 10. Assembly Bill 124 is the result of many brains coming together during the interim.

Every state in the United States sets a maximum age of juvenile court jurisdiction. However, in about two-thirds of the states there is no statute that specifies a minimum age under which a child cannot be adjudicated delinquent. In those states without a statutory minimum, there is nothing legally preventing the state from prosecuting even the youngest of children. This runs contrary to all of the scientific research and emerging case law that recognizes children are inherently less culpable than adults and that the younger a person is, the less competent he or she may be. In Nevada, the age is currently 6 years old, although treating a child as a juvenile delinquent this young is uncommon. However, there have been instances when a child as young as 8 years old was shackled along with other older children for behavior traditionally thought of as delinquent.

Recognizing the need to protect the community and instill a sense of responsibility for one's actions, it is becoming increasingly apparent and alarming that children as young as 8 or 9 years old are finding themselves in serious trouble with the system. These need to be seen as flashing signs and signals to us of a problem in the home with the parenting structure. After all, we do not get to pick who our parents are or choose the family we are born into.

At this time, I would like to walk you through the bill, which is pretty straightforward. In section 1, it defines a delinquent child as a child who is at least 10 years of age. In section 2, wherever the age of 8 is referenced, the age is being bumped up to 10. There will be some amendments that the District Attorney's Office will be providing that we are agreeable to. I am aware that the District Attorney's Office is interested in excluding those that are 8 or 9 years old who are alleged to have committed sex acts or murder. This is certainly a policy consideration for the Committee. At the very least, A.B. 124 represents progress toward treating children as children and holding the adults in that child's life responsible for that child's well-being.

Eleven states and territories have a minimum age of 10. Those states include Minnesota, Arkansas, Colorado, Kansas, Louisiana, Mississippi, Pennsylvania, South Dakota, Texas, Vermont, and Wisconsin. Six states have lower minimum ages. The remaining states and territories do not address a minimum age;

Nevada should no longer be one of them. I am pleased that the District Attorney supports this notion.

In conclusion, I would like to cite Dr. Michelle Anthony, who has an extensive background in child development in working with the American Academy of Pediatrics. She notes, "While still lacking the ability to fully understand abstract or hypothetical concepts (e.g., how a person who is a 'minority' can be in a situation where she would be the 'majority'), 8- to 10-year-olds are gaining a better understanding of a broad range of here-and-now mental activities." The point here is that I do not see how children this age can be held culpable for their actions when they are mentally unable to comprehend the outcomes of such actions. That completes my testimony on this bill.

Chairman Hansen:
Are there any questions at this time for Assemblywoman Diaz?

Assemblywoman Seaman:
Do you have any data on how many children aged 8 and 9 are currently designated delinquent, and how their needs will be met if this bill is passed?

Assemblywoman Diaz:
I do not have that data, but perhaps someone else, like Ms. Duffy, may have some information. I have not heard that this is a major issue, but I think we have seen some situations where 8-year-olds are being adjudicated.

Assemblyman Ohrenschall:
This is more of a comment. I want to thank you, Assemblywoman Diaz, for having the torch passed to you on this public policy issue from our former colleague, Mr. Frierson. In my practice, as a deputy public defender, I have seen children this young. I applaud the District Attorney's Office for their effort to sort through the cases when kids that age come through. They try to take a very close look at each case. I think this change is needed.

Chairman Hansen:
Are there any further questions for Assemblywoman Diaz? I see none. Ms. Duffy, would you like to help fill us in? How many cases are there in Nevada involving 8- and 9-year-old children in your system?

Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Office of the Clark County District Attorney:
I cannot speak for the State of Nevada, but I do have some colleagues here from Washoe County who may be able to assist with other statistics. I can help out some with Clark County. I do not know how many are actively on

probation. My best educated guess would be that currently there are no 8- or 9-year-olds on active probation because they would not have been deemed competent to stand trial. As you learned from the competency bill, you have to be an adjudicated delinquent to go on to probation. Therefore, most of our 8- and 9-year-olds, under our current policies for determining competency, are not deemed to be competent once they get to juvenile court. We are offering services to them and their families on an informal basis. As you also heard earlier in the competency bill, once the child comes under court jurisdiction, we have the ability to mandate that the parents do services in order to learn how to better parent those children. Those have been the important issues when bringing those 8- and 9-year-olds before the juvenile court when the District Attorney's Office ultimately files petitions.

I have with me our 2014 top five charges for 8- and 9-year-olds, including misdemeanor battery. The top five petitions that the District Attorney's Office actually filed, in order, are: (1) battery, (2) petit larceny, (3) school disturbances, (4) battery on a school employee, and (5) sexual offenses. As you can see, some of the more serious of those offenses starts getting into the juvenile sex offenses, which is why we have proposed, through the Nevada District Attorneys Association (NDAA), the amendments to exclude those offenses for offenders below 10 years of age.

With regard to weapons offenses, other serious offenses that 8- and 9-year-olds have been charged with in the last two years include possession of dangerous weapons, carrying concealed weapons, drawing or exhibiting a deadly weapon in a threatening manner, and assault with a deadly weapon. There are not as many kids charged with those offenses as in the top five charges. However, we still have some 8- and 9-year-olds committing some serious offenses with weapons. They have come into juvenile court to receive services but have not been adjudicated delinquent on those acts.

There is another process in place where many more kids are coming into the probation department who may never have a petition filed by the District Attorney's Office. That process falls under NRS Chapter 62B.200. I will give you an example of an 8-year-old who committed a graffiti offense. The 8-year-old, along with her 7-year-old codefendant, picked up an abandoned can of spray paint and started spraying the grass. She proceeded to hit the sidewalk, and then hit somebody's truck inside the apartment complex parking lot. A witness saw this and called the police. The police arrived and cited the 8-year-old and not the 7-year-old because the 7-year-old cannot be cited under current law. What that means is that the 8-year-old has to go and meet with a probation officer. She meets with the probation officer, and if she admits to the offense, they may handle it informally, especially if the family is

able to pay to the victim whatever restitution may be outstanding. There would also be services provided to the family at that time. We had a total of 64 referrals of 8- and 9-year-olds in 2014. Some of those had charges that were filed. The others were handled informally through probation with services offered to the family. Most of the time they received warnings, making it an informal probation process.

I have been inundated with conversations about the culpability of children, and I understand what those conversations are based on. I also believe that consequences are important to children. Those who have children know that if your child creates a school disturbance, you will consequence them in some manner when they come home. Hopefully, the child will connect that consequence to their behavior. That is parenting. We have had 9-year-olds that have had marijuana cigarettes in their backpacks. If my 9-year-old came home with a marijuana cigarette in his or her backpack, I would parent the child and provide a consequence. For the 8- and 9-year-olds, we are trying to determine what the societal decision is from a parenting perspective. What are our kids doing then that society has to step in because the parents may not have the access to resources they need or may ignore it altogether? That is where we start stepping into the realm of juvenile sex offenses and murder, as in our proposed amendment through the NDAA. In those cases, we believe that those are societal issues that should potentially be addressed through the juvenile court system.

As I have discussed through the Chairman of the Interim Committee, some of the higher-level offenses that are being committed by 8- and 9-year-olds are more of a policy issue for this Committee to determine. We have kids arrested at the scene and brought to a detention facility for hitting his or her sibling or for throwing a remote at his or her mother. I believe this Committee should consider what your constituents see as parenting issues versus a societal issue. What the juvenile court can offer is services. We want these kids to be rehabilitated. We do not want them becoming bigger delinquents in the end. Sometimes our families do not know how to access these services. Sometimes what it takes is for the probation officers to assist the families in accessing the services.

I have found in my experience with our juvenile sex offenses, you will have more victims if you do not treat them early. The victims will then become the next 8- and 9-year-old offenders. I believe that everybody will be in support of ensuring the treatment is provided. Treatment is difficult to navigate for juvenile sex offenders because it is very specialized. Families will say the children are in counseling, but the counselors may not be experts in juvenile sex offense counseling, which may not treat the issue. We need to be able to

access financial support for the families who may not have access to health insurance in order to get the treatment. We should also provide victim resources so that the victims receive counseling preventing them from becoming our next perpetrators. If you have any more questions, I will be happy to answer them.

Assemblywoman Fiore:
My big concern is the domestic violence, such as brothers fighting, as in one of the examples you provided. We really have to fix that. With brothers, sisters, and kids throwing a tantrum, what they go through is not okay.

Assemblyman Jones:
Through your testimony, I was not able to determine if you are a proponent, neutral, or what your position is with regard to the bill. If parents are not being parents, they may need some direction from the court system. Personally, when my son was about 18 he did spend a night in jail. That one night in jail changed his attitude tremendously. I know sometimes it can be a benefit as in the term scared straight. Are you a proponent? And if so, wholeheartedly or reluctantly? What is your position?

Brigid J. Duffy:
I am a proponent on behalf of the Clark County District Attorney's Office. I am not a personal advocate of anything. I run the entire juvenile division. In that role, I see 8-year-old misdemeanants as parenting issues. Our resources are better spent on law enforcement agencies to deal with higher level offenders. If the school district has a problem with a child who is acting out, the juvenile justice system is not necessarily the place for that child. There are other resources that should be used. Our deficit is people not knowing where to go for resources. Somehow, we also have to be proactive. Cutting off these 8- and 9-year-olds from the juvenile justice system with regard to batteries, petit larcenies, school disturbances, graffiti, and those types of issues is supported by the District Attorney's Office. We have to be responsible to inform the public where they need to go when this occurs if this Committee passes the bill. Maybe a parent is trying to do what they are supposed to do but they cannot because the child has special needs. Then, there are those parents that are not giving consequences or assisting in learning better behaviors. In this case, a call can be made to the child protective service hotline because the parent is demonstrating abuse or neglect.

I hope I am clear in that we are strongly in support of the misdemeanors coming off. We are proposing the amendments for the juvenile sex offenders, and I testified to that at the Interim Committee hearing. I was brought in to the Interim Committee as a person to provide information and suggestions.

There were conversations about 8- and 9-year-olds committing felonies; crimes against persons, weapons, making them Children in Need of Services. The bill is what it is. Our biggest issue was the juvenile sex offenders and the kids that commit murders. Although we have not had an 8- or 9-year-old who committed murder in Nevada, it is not unheard of across the country. When do we believe that we may need to get involved as a juvenile justice system to ensure services to the family of the victim and the family of the perpetrator?

Assemblyman Nelson:
My question is about the proposed amendment from the Nevada District Attorneys Association (Exhibit G). You are adding language. I understand where it applies to murder, but you also say "or an act under NRS 62F.100." Those statutes relate to sexual crimes. I have read NRS 62F.100, which is pretty broad. It includes sexual assault, battery with intent to commit sexual assault, pornography with a minor, open and gross lewdness, indecent or obscene exposure, lewdness with a child, luring a child with mental illness, et cetera. You want all of those included as sex offenses carried down to 8 years old? Is that correct?

Brigid J. Duffy:
That is correct. Those are currently the charges that we would be able to file in the juvenile court.

Assemblyman Elliot T. Anderson:
I have two questions. Battery is harmful touching, correct? So at what point does wrestling with your brother become harmful? Secondly, as a follow up to Assemblyman Nelson's question, would open and gross lewdness apply in a situation where a kid as young as 8 years old runs outside without any clothes on? Would that be considered a sex offense?

Brigid J. Duffy:
Running outside without his clothes on would not be considered a sex offense. I strongly doubt we would file that. I cannot say that someone would not call the police for that. If that were to come to us without any other facts, there would not be a charge of open and gross lewdness because the child ran outside without clothes on. To answer your first question, there have been many cases brought to us with issues between siblings or parent and child. The police go to the scene, assess the situation, and will look for marks or bruises. Someone called the police, so whether they are out in the backyard playing, at some it meets the criminal or delinquent standard and then they would refer it to the District Attorney's Office. We will then screen that case to see if there were any injuries that occurred, or if there was a series of power and control issues between these two siblings, before filing charges. It goes by

a case-by-case basis. Last session, there was some conversation about domestic violence accounts that were deemed to not be domestic violence but, nonetheless, they have been charged in order to obtain some family services.

Assemblyman O'Neill:
What about the 8- or 9-year-old that is a repeat offender? Does there come a time that even with the misdemeanor offenses, we have to take stronger action? Does this preclude it?

Brigid J. Duffy:
I do not believe there is an exception for repeat offenders in the proposed bill as it is written. If an 8-year-old is habitually stealing from the local store, there is nothing that addresses his third offense. If this bill were to go through, nobody should be contacting the police for an 8-year-old that steals. We will never know that there is a repeat offender. Right now, our local law enforcement understands that the age of 8 is the age that you can cite or arrest. Once this bill passes, they will know that no longer exists unless these offenses are what is being alleged. There would be nothing.

Assemblyman O'Neill:
Is that acceptable to you? Do you think that is acceptable to the community?

Brigid J. Duffy:
I spent some time thinking about that last night as I thought about coming to this Committee today, and my role as Clark County Chief Deputy District Attorney, taking the position that we do not necessarily need to bring in 8-year-olds for certain misdemeanor offenses. I do not know if it is ultimately acceptable if we have an out-of-control child that keeps wreaking havoc on the community. However, I think there needs to potentially be some type of report made to Child Protective Services (CPS) for the lack of supervision over that child. What it comes down to is an educational issue for our communities. There could be language written in the bill that states that if the child is a repeat offender, a report should be made by law enforcement to the local child welfare agencies for investigation of abuse or neglect. I do not know how else to track it if this is the child's fifth time because law enforcement is not going to be called.

Assemblyman Araujo:
Currently, where and with whom are these 8- and 9-year-old children housed when they are detained?

Brigid J. Duffy:
Once detained, they are housed in the Clark County Juvenile Detention Center, or the equivalent in the rest of the state. Currently, there are processes in place to prevent detaining a child, up to 12 years old, overnight. Let us say there is a 9-year-old who is a victim of sex offenses in the home. Local law enforcement is aware that they can contact us in advance of the arrest. Juvenile Justice Services has specialized probation officers for those sexual offenses. They will work around-the-clock for a potential foster home for the child so that child does not have to spend the night in the juvenile detention center. I cannot say that they never spend the night in the juvenile detention center because we do have very crowded juvenile offense-specific foster homes. However, they do work very quickly to identify a home to prevent them from staying there. When a child comes in on a domestic violence arrest, they will come into the juvenile detention center. There is a mandatory 12-hour hold in the booking area, just like for an adult. There are exceptions to that making it different from the adult system. Juvenile Justice Services may call relatives to take the child, or they can make a quick intake appointment with a probation officer to see if the family is amenable to services in order to get the child out quickly. Ultimately, they are housed in either our foster homes or our detention center.

Assemblyman Araujo:
Once these 8- or 9-year-old children have to appear in court, are they shackled with belly chains?

Brigid J. Duffy:
There is an informal process currently. Clark County's policy and procedure is that the children would not be shackled. I believe the same is true in Washoe County. Of course, it is not law. However, voluntarily they do not put them in belly chains and restraints unless they are a danger to themselves or others. It has been a very long time since the policies and procedures have been in place, and I have not seen any 8- or 9-year-olds in restraints in the courtroom.

Assemblyman Wheeler:
Knowing a lot of people in law enforcement that have worked gang details, we were always amazed at how young the gang members were getting. They would send the youngest ones out to create some of the most violent crimes because they would go into the juvenile system and not the adult system. That was a badge of honor and how you earned your gang wings. Do you not fear that this bill will actually accelerate that? Are we going to get 9-year-olds involved in gang activity? There are some in gang activity anyway at 9 years old because that is the only family they have. If this bill passes, there is nothing

you can do to a 9-year-old. Does that not make you fear the age will drop for violent crimes?

Brigid J. Duffy:
I do believe there is a way to address that. Clark County District Attorney's Office and the District Attorney's Association have concerns. That is why I gave out the list of violent offenses and weapons offenses that the 9-year-olds have already been charged with in our community within the last two years. I think it is something that can be addressed if this Committee thinks that it is important. The Clark County District Attorney believes it is important to address weapons issues. However, we agreed to the amendments as proposed.

Assemblyman Wheeler:
You said you gave us the status on the 8- and 9-year-olds, but if this law goes into effect, there will not be any status on the 8- and 9-year-olds at all. How would we even know if it actually accelerated?

Brigid J. Duffy:
That is correct, unless it is addressed as an issue of policy similar to how Assemblywoman Diaz addressed it earlier. You can all decide to add in certain weapons offenses or the higher level offenses. You are correct to say that if it is not in there, it will not be addressed at all. Those are the same concerns we had when we began handling the certification and direct file ages as well. Now the gang members will be giving the guns to the children as they will be handled in juvenile detention.

Assemblyman Gardner:
It is my understanding that this bill is dealing with criminal actions and not social services. It will remove the child from the criminal actions, but social services will still be able to do their part. It is not limited in that part, correct?

Brigid J. Duffy:
This is not affecting the ability of a mandated reporter, or any reporter, to call a child protective service agency to make a report of abuse or neglect. I would not be able to guarantee that they would accept the report of abuse or neglect on a child who stole from Target, but nothing prevents someone from making that report.

Assemblyman Elliot T. Anderson:
There would be nothing stopping them from interviewing the parents and continuing to build a case file. Under the existing law, if there was something pervasive that might have gone to juvenile court in more than one instance, they could start to build a case file for protective custody, correct?

Brigid J. Duffy:
Yes. They may have 20 information-only reports, but eventually there will be some concerns having those types of reports for a child in the community running amok.

Assemblyman Ohrenschall:
Thank you for being here today. You are in a unique position to help our Committee since you are in charge of delinquency, abuse, neglect, and terminations of parental rights. You see it all. We have current law where there is an offense; for example, the 8- or 9-year-old throwing the cell phone at the sibling, someone calls police, and the police show up, et cetera. That is how the law works now. If A.B. 124 passes, as is, with the same scenario using the 8- or 9-year-old throwing the cell phone, do you envision the child spending more time at Clark County Juvenile Services, Child Haven, or foster care? Or do you think this will truly result in services being put in place and allowing less time away from their family? If it were a delinquency petition, we would be looking at possible time in juvenile detention. I am wondering if we might be looking, alternatively, at time at Child Haven or a comparable facility. Can you elaborate on that?

Brigid J. Duffy:
Assuming that 8- and 9-year-olds can no longer be handled for certain offenses in the juvenile justice arena, police will call a report in to CPS. The report is called in and depending on the information that is gathered, if an investigation goes forward, there is always a chance that the child could be removed and placed into Child Haven. Domestic violence could be the child having a temper tantrum and throwing his brother's cell phone and breaking it. On the other hand, domestic violence could be that this child is so abused and neglected that he is acting out. When CPS walks into that door, they do not know what they are going to find. It could always result in the child being removed from the home if that child is not safe and there is present or impending danger. Those are the standards that CPS uses to remove a child. In some cases, they may end up in Child Haven or in a foster home.

Assemblyman Ohrenschall:
Do you have any data as to what the average stay is for a child at Child Haven once CPS decides to remove them from the home?

Brigid J. Duffy:
I do, but I do not have it today. I will make sure I get that to you.

Frank W. Cervantes, Director, Department of Juvenile Services, Washoe County:
With respect to some of the numbers in Washoe County, over a three-year period, we average about 25 referrals a year to our department. That is about 75 in three years. We only filed three petitions in that time period. There was one for assault with a deadly weapon, one for sexual assault, and one for lewdness. A lot of the heavy hitting comes up for sexual offenses and those types of offenses. There was a question about continued behavior by an 8- or 9-year-old. I have been wrestling with what the age of jurisdiction is. If it is set at 8 years, what do we do with 7-year-olds? One could argue that what we do with 7-year-olds is what we do with 8- or 9-year-olds. Really, there needs to be a community response to handle those kids. There could be some redistribution with some cases that would traditionally come to juvenile services, which may now go to social services or to a community-based provider. That is how it would look. Who handles the kids if we do not? I can tell you that detention is not the best place for 8- and 9-year-olds. It is really not a good environment for them and they do not get better. Having said that, where we see the ramping up of multiple referrals and reoffenses is at the age of 10. When we review our data, the age of 10 appears to be the break point where kids are probably better served in the juvenile system than at the age of 8 or 9. I am in support of the bill with the amendments that the Nevada District Attorneys Association has proposed. If you have any questions, I would be happy to answer them.

Chairman Hansen:
I see no questions at this time. Is there anybody else in the audience to testify in favor of the bill?

John T. Jones, Jr., representing Nevada District Attorneys Association:
We are here in support of A.B. 124 with the amendments that have been provided (Exhibit G). I do want to thank Assemblywoman Diaz and Chairman Jason Frierson of the Interim Commission on Child Welfare and Juvenile Justice. Just to bring everything home with respect to the Assemblymen's questions, we are going to rely on our police officers. If a police officer is called to a scene where a child has been caught stealing once, that is not going to be an issue under this bill. If the officer has responded on numerous occasions, we will start looking at child welfare issues. Maybe there is a supervision problem in the home. We are going to rely on Child Welfare Services to fill the gap. The issue being is juvenile justice the appropriate place for 8- and 9-year-olds? For some of these misdemeanor crimes, our answer is no. It is more a parental supervision issue. Hopefully, working with the parents through Child Welfare Services will remedy those problems.

Specifically, with respect to murder and certain sex crimes, we do need a larger response. I have worked with juvenile sex offenders as young as 9 years of age who were sexually acting out on a sibling or others. It is important for us to address those issues immediately. We have seen instances where parents are seeking help, and we can provide that help. I want to also address that bringing in a child at 8 or 9 years old does not have any Adam Walsh consequences. A child must be 14 years of age or older under the Adam Walsh Child Protection and Safety Act. There would be no registration or community notification for these children. They would be provided services so that they do not reoffend and we do not see further victims in the community. I am willing to answer any questions.

Regan Comis, representing M+R Strategic Services:
We would like to voice our strong support for this legislation. We would agree with prior testimony that these 8- and 9-year-old children need services and should not be placed in detention. Something that has not been noted is that often with juvenile sex offenders, they themselves have been victims. We are absolutely willing to support the amendment brought forward by the District Attorneys Association (Exhibit G). If a juvenile is acting out in this manner, they do need services. This is the best way to do that. For children fighting with their siblings or throwing remotes, detention is not a proper place for them. The family situation should be examined further. We would like to voice our support. I would be happy to answer questions.

Brian Vasek, representing Clark County Public Defender's Office:
I testify in support of A.B. 124. Prior to law school, I have worked with juvenile sex offenders; it was in a private treatment facility in Columbus, Ohio. We had kids between the ages of 10 and 17. Although I did not work with kids between the ages of 8 and 10, there were children adjudicated at that age coming in for our services. I would like to echo the same sentiments as Assemblywoman Diaz and Ms. Comis. Contrary to science, this is not the right placement for some of these children. The bills discussed today show how complex the juvenile justice system really is and the reforms that are necessary to get these kids the services they need, but also in the right place. Kids as young as 8 years old should not be sitting in residential treatment facilities or in juvenile detention even for a short time. I appreciate Ms. Duffy's psychology lesson. As a previous psychology student at Ohio State University, I can appreciate Pavlov conditioning. The consequences necessary for children, especially as young as 7 through 9 years old should be coming from home. We believe the services that can be provided through CPS and others would be the appropriate place, and not through the juvenile justice system. If there are any questions, I would be happy to take them.

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:
I am here today in support of the bill. I agree with all of the previous testimony but would like to add two additional points. Initial contact with the justice system is shown to lead to more delinquency. I respect Assemblyman Jones' opinion, but studies have shown that it tends to lead to a spiral of them having more contact. There are also studies that show that once you have a criminal record at a young age, you are much less likely to graduate from high school and much less likely to graduate from college. Anything eliminating that initial contact, which may send that child down that type of road, we support. We want kids to finish their education and become contributing members of society.

The other important component is the racial impact. We have some statistics on racial impact of 8- to 10-year-olds in Clark County. The studies show that African American kids are more than twice as likely to be arrested for these offenses at the ages of 9 and 10. We know that in Clark County, it is only 12 percent of the population. It is almost an inverse chart. The younger kids get, the higher the disproportionate contact in Clark County. Across the country, we know that while contact with the juvenile justice system is going down overall and juvenile crime is going down overall, it has not made a difference for youth of color. With this particular age group in our state, it is very important to move forward with this bill. I will take any questions you may have.

Assemblyman Ohrenschall:
Most of us are shocked by those statistics. Has ACLU found any correlating factors as to why that is?

Vanessa Spinazola:
I do not have it specific to Nevada or Clark County. Overall, the racial impact has to do with perceptions of the justice system on all the levels from initial arrest, to the processing, to the court, to the sentencing, et cetera. Right now in our country there is a racial impact, but I do not have any reason specific to Nevada.

Assemblyman Ohrenschall:
Is your data limited to Clark County or the entire state?

Vanessa Spinazola:
The data presented during the interim was Clark County data. The studies are from the National Conference of State Legislatures, the Sentencing Project, and

the National Juvenile Justice Network. They all have studies about disproportionate youth of color impact with the juvenile justice system.

Chairman Hansen:
I see no more questions. Is there anyone else who would like to speak on behalf of A.B. 124? [There was no one.] Is there anybody to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? [There was no one.] I will bring Assemblywoman Diaz back to wrap it up.

Assemblywoman Diaz:
I appreciate your time and consideration of A.B. 124. As mentioned by the chief justices who presented at a recent hearing on this subject matter, diversion programs are super important in terms of us meeting the needs of our children as well as being fiscally responsible. The more we deal with things on the front end, the less we must deal with them on the back end. I wanted to leave that fresh in our minds. As an elementary school teacher and mother, I know that when children are acting out or getting into trouble, it is a cry for help and attention. I just want to leave you with a thought. Do you turn your back on your child, or do you try to do what is best for that child in order to meet their needs? With all of the testimony that we have heard here, social services are an extremely critical part. We need to do a better job connecting parents with the available resources to avoid situations where our children are not where they are supposed to be. We need to get them where they need to be, which means graduating and being healthy, productive members of our society.

Chairman Hansen:
At this time, we will close the hearing on A.B. 124, and open it up to public comment. Is there anyone who would like to testify on any issue here or in Las Vegas? Seeing none, we are adjourned [at 9:54 a.m.].

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 19, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 138	C	Susan Roske	Written Testimony
A.B. 138	D	Kimberly Larson	Letter dated 2/18/2015
A.B. 113	E	Nevada Supreme Court	Amendments to A.B. 113
A.B. 113	F	Nevada District Attorneys Association	Proposed Amendment
A.B. 124	G	Nevada District Attorneys Association	Proposed Amendment