MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
February 24, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:08 a.m. on Friday, February 24, 2017, 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblyman James Ohrenschall (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman John Hambrick, Assembly District No. 2

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Janet Jones, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth, Washington, D.C.
Kristina Wildeveld, Attorney, representing Nevada Attorneys for Criminal Justice
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office, and representing Nevada District Attorneys Association
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Tonja Brown, Private Citizen, Carson City, Nevada

Chairman Yeager:
[Roll was called. Committee protocol and rules were explained.] In today's meeting, we are going to begin with Committee bill draft request (BDR) introductions, which is BDR 59-687.

BDR 59-687—Enacts the Revised Uniform Fiduciary Access to Digital Assets Act. (Later introduced as Assembly Bill 239.)

This BDR comes out of the Judiciary Committee. I will entertain a motion to introduce BDR 59-687.

ASSEMBLYMAN WHEELER MOVED FOR COMMITTEE INTRODUCTION OF BILL DRAFT REQUEST 59-687.

ASSEMBLYWOMAN COHEN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL WAS ABSENT FOR THE VOTE.)

We will now open the hearing for Assembly Bill 218.

Assembly Bill 218: Revises the provisions concerning certain juvenile offenders. (BDR 14-215)

Assemblyman John Hambrick, Assembly District No. 2:
I am privileged to have James Dold on an audio call from Washington, D.C.; he is the primary writer of this bill. There are proposed amendments, but we will address those later.

James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth, Washington, D.C.:
I want to thank Assemblyman Hambrick; we have worked together for many years on children's rights issues. I also want to thank him for his leadership on this issue and issues that he has fought for on behalf of Nevada's children.

Assembly Bill 218 builds off the progress made from Assembly Bill 267 of the 78th Session. Assembly Bill 267 of the 78th Session eliminated life without parole sentences for juvenile offenders, and ensured they had the opportunity to go before the State Board of Parole Commissioners later in life for serious crimes they had committed while they were minors, either after 15 years for nonhomicide offenses or after 20 years for homicide-related offenses. That bill was in response to a number of things that happened over the last several years, including a number of U.S. Supreme Court cases that found there are fundamental differences between juveniles and adults, specifically, in a series of four cases: *Roper v. Simmons,* 543 U.S. 551 (2005), which ruled it was unconstitutional to impose the death penalty for juvenile offenders; *Graham v. Florida,* 560 U.S. 48 (2010), that ruled it was unconstitutional to sentence juveniles to life in prison without the possibility of parole for a nonhomicide crime offense; *Miller v. Alabama,* 567 U.S. 460 (2012), where the court held that the Eighth Amendment's prohibition against cruel and unusual punishment forbids the mandatory sentencing of juvenile homicide offenders to life in prison without the possibility of parole; and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), which found that the 2012 decision was meant to be applied retroactively. This ruling further held that life without parole sentences for juvenile offenders violated the Eighth Amendment's prohibition on cruel and unusual punishment, and that the vast majority of juvenile offenders were entitled to have some sort of parole eligibility during their lifetime. I am proud that Nevada was one of the states that was out front on this issue and was able to pass A.B. 267 of the 78th Session even before the U.S. Supreme Court mandated that most juvenile homicide offenders have the opportunity to receive parole eligibility.

The underlining thread of all of these cases was the proposition by the court that children are different from adults: their brains are not fully developed, and in particular, the prefrontal cortex, which controls executive functioning, is not fully developed. As a result, children actually rely mostly on a more primitive part of their brain, called the amygdala, to process information and make decisions. It is an emotive part of the brain, which makes them more susceptible to peer pressure and to making irrational decisions without necessarily thinking through the long-term consequences of their actions. In recent years, there has been a renewed understanding of how children are fundamentally different from adults. In some ways, our society already recognizes these differences. We do not allow children to vote, serve in the military, buy alcohol or tobacco products, enter into contracts, or get married.

One area in which we had not recognized the difference between children and adults was in our criminal justice system. This goes back to the late 1980s and early 1990s when a group of criminologists had theorized that there was a new class of "super predator" children coming of age who were more violent and less remorseful than ever before. These children were characterized as being Godless, jobless, and fatherless, and were demonized in the eyes of the public. The prevailing thought at the time, and what many criminologists were encouraging state legislators to do, was to pass draconian laws allowing to easily transfer them into the adult criminal justice system, while at the same time increasing mandatory minimums. This resulted in children being subject to extreme penalties such as the death penalty, life without parole, and extreme mandatory minimum sentences. This was the trend until the U.S. Supreme Court began to weigh in on these issues in 2005 in the aforementioned cases.

Assembly Bill 218 is a continuation of the progress made in the last session. The provision in section 1 allows judges to depart from mandatory minimum sentences up to 35 percent of what is authorized by law. This builds on A.B. 267 of the 78th Session, because what was included in that legislation was a provision that required judges at the time of sentencing to consider the differences between juvenile and adult offenders, including, without limitation, the diminished culpability of juveniles as compared with that of adults, and the typical characteristics of youth. A lot of that language comes from the recent U.S. Supreme Court cases I previously mentioned.

Subsection 2 builds off that by saying once a judge considers how children are different, we want to empower the judge if he or she feels under all the circumstances that a juvenile is deserving of a less severe punishment. It is not required that the judge depart; he or she can still require whatever the statutory, mandatory minimum is to be imposed. But they can say, "I believe that after looking at the facts, including the child's background, neighborhood they grew up in, and their prospects for rehabilitation, that this child should not receive as lengthy a mandatory minimum sentence as an adult offender." It allows them to depart up to 35 percent; for example, if you had a mandatory minimum of 20 years, judges could, at their discretion, say, "Twenty years is too long. I am going to depart from the mandatory minimum down to 13 years." This could knock 7 years off a 20-year mandatory minimum. This is a reasonable and modest provision, and I am speaking to the friendly amendment (Exhibit C) that has been offered by the Nevada District Attorneys Association that we believe is a good amendment.

Given the rest of the provisions of the bill, I believe with that amendment the Nevada District Attorneys Association is in support of the bill. We try to work very closely and I want to thank John Jones, the Chief Deputy District Attorney as well, who I believe is probably in the room, for working with us on this bill and getting the district attorneys to be in support of the bill with the proposed amendment (Exhibit C). Again, this builds off the progress that was made with A.B. 267 of the 78th Session. It is a very modest provision and gives judges more discretion to create a fairer sentencing scheme for children if they deem it appropriate, given

everything that we have talked about in terms of the diminished culpability of juveniles and their prospects of rehabilitation. With that, I will close and I am happy to take any questions from the Committee.

Assemblyman Fumo:
We need to correct these injustices for the children who are wrongfully imprisoned when their brains are not fully developed, and to give the judges the opportunity to correct that. Would you be in favor of making this retroactive? We might have children in custody now whose sentences we could correct. Rather than making this effective October 2017, make it retroactive so children who have been in there for the last 3 to 5 years, their sentences could be corrected as well.

James Dold:
Certainly, anytime we are talking about allowing for less harsh punishments for juveniles, we are in favor of that. I suspect that John Jones will have something to say about this as well.

The opposition to that amendment would be the number of cases. The finality of sentences once they have been put into place is often difficult to change. While we agree with the idea, it could be difficult to implement by having those individuals come back into court and go through the resentencing process. I do not know how many individuals would be directly impacted, but it could place a burden on the court systems, which would make enacting this provision retroactively a bit difficult. We certainly agree with the concept, but the complication would be in how the courts could handle that volume.

At least going forward, children will have the opportunity to depart from those mandatory minimums. One good thing about A.B. 267 of the 78th Session was for the nonhomicide offenses; it set a cap for the number of years an individual can serve before becoming eligible for parole. In Nevada, no matter what nonhomicide crime or series of crimes a child commits, he or she has to be eligible for release on parole after no more than 15 years. Connie Bisbee, Chairman of the State Board of Parole Commissioners, has done a phenomenal job in breathing life into that law by really examining children on a case-by-case basis and making appropriate determinations.

The implementation of some of the provisions that had been enacted previously now has been given a retroactive effect. At our convening last fall, we had two individuals join us who benefited from A.B. 267 of the 78th Session. One man had been in prison for 31 years for a crime he committed when he was 15 years old; another man had been in prison for about 20 or 25 years for a crime he committed also at 15 years of age. Both were serving life without parole before A.B. 267 of the 78th Session went into effect. They are both doing very well now. Nevada is doing very well at ensuring the individuals who have changed and been rehabilitated can be safely released back into society and have been afforded that second chance. There are some individuals who have benefitted retroactively from these changes. I just do not know in terms of the burden it might place on the courts to revisit those prior sentences because there would probably be so many of them.

Assemblyman Fumo:
The courts seem to have no problem sentencing them in the first place. I am sure they would have no problem correcting the injustice after the fact, so I would encourage you to look into that proposal.

Assemblywoman Miller:
Section 2, subsection 1, paragraph (b), where it states ". . . convicted of a subsequent offense or offenses not involving violence . . . ." Could you speak more about that, as it does not seem very specific? Violence could be a robbery or homicide. Is there a line or variance for what would be considered violent offenses? I would like to recommend the language be more specific, if there is intent behind that.

James Dold:
We agreed that section would be taken out of the bill, if the Committee adopts the proposed amendment. There were a number of concerns raised about that provision in particular.

Assemblywoman Miller:
Would you be replacing it with something else? I do not want the nature of the bill to go in a different direction. Are you going to remove it completely or try to replace it with other language?

James Dold:
We were going to remove it completely. It is very common when children first enter into the system at 18 years of age; they have still not yet matured. We have a number of children who continue to get into trouble. What the juvenile brain science shows is that the brain is not fully developed until around 24 to 25 years of age. The original intent of that section was to allow individuals who get into trouble at an early age to have the benefit of the early parole provision under A.B. 267 of the 78th Session. There were a number of concerns brought up by the Nevada District Attorneys Association in terms of the implementation of it and how it could make it more difficult in terms of controlling the inmate population for the 18- to 24-year-olds. The intent is a positive one because of the fact that we know that children's brains are not fully developed, so we do not want to condemn them to longer prison sentences, especially if they grow and mature during their incarceration. In the interest of compromising with the Nevada District Attorneys Association, we agreed to delete that section and focus on giving the judges more discretion in sentencing these youths.

Assemblyman Wheeler:
Having a law enforcement background, I saw that many gang members would send out younger children to commit crimes because the sentencing was much less for a juvenile. Does this bill not preclude the judge from imposing the maximum sentence in certain conditions?

James Dold:
That is correct. They can still impose the maximum penalty authorized by law. This bill just gives the judge more authority in case they decide that, given all the circumstances, the mandatory minimum is too harsh for this juvenile offender. It is completely up to the discretion of the judge.

Assemblyman Pickard:
Having worked with the juvenile justice system, and given my understanding of brain development, I think this is an important bill, and I support it. I have a technical question with respect to section 1, subsection 2, paragraph (b). It appears that the judge can reduce the minimum mandatory sentence by not more than 35 percent. How was the 35 percent determined? Was it arbitrary, or was there a science behind that figure?

Since we are deviating from an adult standard, there is an enormous difference between how these cases are adjudicated in juvenile court versus adult court. Adult court is punitively focused and juvenile court is therapeutically focused. Juvenile court is about working as a team to try to get the child back on track, although they may be tried as an adult at the end of the trial. Would it be possible to allow the district court to refer it to juvenile court for sentencing, because they have additional resources and programs that are available to them that are not widely known or available in the adult court? Would that be a possibility?

James Dold:
The 35 percent is in some ways an arbitrary number. There are states that have similar provisions, and some states that allow the judges to depart up to 100 percent of the mandatory minimum. Thirty-five percent was a bit more than a third of the sentence and a percentage we felt the law enforcement community and public defenders would support.

To your second point regarding children in the juvenile system, what we are trying to do is go back and make the criminal justice system fairer and age appropriate for juvenile offenders. We are trying to beat back some of the policies I mentioned previously that came up in the 1980s and 1990s, which was the "tough on crime" era and really did not have the understanding of juvenile brain science that we have today. You are correct that the juvenile system is meant to treat juveniles whose brains are not fully developed.

There are a number of different programs around the country. The Mendota Juvenile Treatment Center in Wisconsin has a program that was created by law that allows juvenile offenders to go into a secured mental health facility for treatment and rehabilitation. These are juveniles convicted of very serious crimes, such as robbery, sexual offenses, and murder. This program enables them to treat the juveniles through group therapy, individual psycho-cognitive therapy, and to be able to release them upon completion of that program. Unfortunately, it is expensive, so it is not available to every juvenile in Wisconsin. There are a number of things that have been passed by legislatures around the country to try to return to the original intent of the juvenile system and focus on rehabilitation.

Assemblyman Hambrick has another bill that deals with individuals who are victims and committed crimes against their abusers. This bill seeks to keep all of those juveniles in the juvenile system.

I would encourage the Legislature to continue to think about why we incarcerate children in the first place. This bill begins to deconstruct some of the harsh mandatory minimums that are currently being imposed upon adults, and not make them applicable to children. It is a very reasonable, modest first step that will benefit many children in Nevada.

Assemblyman Pickard:
If we are only taking a partial step, I would rather take the full step and get it right the first time. I would encourage you, as we go through this, to look at the possibility of either leaving it to the discretion of the judge to provide the services available in the juvenile justice system, or moving it to juvenile justice court for sentencing. The juvenile justice system is familiar with the various programs available. With respect to the 35 percent, given it is an arbitrary figure, would you and Assemblyman Hambrick be willing to rewrite it so that it is left to the discretion of the judge and remove the arbitrary nature?

James Dold:
This is Assemblyman Hambrick's bill so I will let him weigh in on your suggestion. More judicial discretion is always good, but I am not sure how the Nevada District Attorneys Association will feel about that change. We want to make sure no one is opposed to the bill and that the Legislature can support it and that the Governor would sign it into law. We would not oppose anything that would give judges more discretion to create fairer and age-appropriate sentences for children.

Assemblyman Hambrick:
We would be willing to look at that amendment. I would like to see the amendment in writing rather than commit to a verbal amendment. Handshakes are great, but seeing it in writing is better. Once it is completed and through a work session, I think we can agree with this amendment.

Assemblywoman Cohen:
Mr. Dold, can you give us information on your background?

James Dold:
I grew up in Las Vegas. I am a product of John S. Park Elementary School, John C. Fremont Middle School, and Advanced Technologies Academy charter high school. I played football and wrestled at Valley High School, and graduated from the University of Nevada, Las Vegas in 2006 with a bachelor's degree in criminal justice and psychology. I have been a children's rights advocate for many years.

Many years ago, Assemblyman Hambrick and I started working on anti-human trafficking legislation. In that same effort, we worked with now-U.S. Senator Catherine Cortez-Masto,

when she was the Nevada Attorney General, on beefing up the penalties and creating Nevada's first anti-sextrafficking statute.

I am also a survivor of child sexual abuse and a labor trafficking victim. I worked in 2013 with Assemblyman Horne on Assembly Bill 146 of the 77th Session that criminalized for the first time involuntary servitude of a minor. I have been advocating for Nevada's children for many years, whether they be victims of crime or have come in contact with the system and the system has not treated them fairly. I view myself as a human rights advocate who is seeking to create a fairer and more just system for our children, whether it is children who have been victimized or exploited or have made mistakes and society has thrown them away. What I seek to do is make sure people understand and remember that no child should ever be denied hope or love, and how we treat our children is a direct reflection of our national character and identity. Whether it is when they commit crimes, or when other people prey upon them and exploit them, I believe it is society's duty to make sure our children are protected at every step of the way. In the words of President Lincoln, ". . . to afford all an unfettered start, and a fair chance, in the race of life."

That is my background and why Nevada holds a special place in my heart, and I have been working with Assemblyman Hambrick and others to make sure there are good laws in place to protect children.

Assemblyman Hambrick:
I have an amendment request to add Assemblywoman Tolles as a primary sponsor (Exhibit D).

Chairman Yeager:
Is there anyone in support of A.B. 218?

Kristina Wildeveld, Attorney, representing Nevada Attorneys for Criminal Justice:
I have been a private criminal defense attorney in Nevada for 21 years. I am modifying my testimony given the tenor of Mr. Dold's testimony.

I am one of the few criminal defense attorneys who practice both in juvenile court and adult court. I am in juvenile court approximately two to three times a week representing those children who are facing certification into adult court. I see these children when the judge decides who will go to adult court to face adult sentences, and most of the time I follow those children to the adult court. I see the sentence they could have faced in juvenile court where the focus is rehabilitation, and when they go to adult court, the sentence is either probation and receive no services, or prison. There is no in-between in this sentencing. This bill is very important for that reason; it will allow the judges to have the discretion to deviate from the mandatory minimum sentences and take into consideration their age, their role in the offense, whether an adult codefendant played a role in the offense, what their home life was like, what their background was, or what their criminal history was. The judges need that discretion when sentencing these children. Our sentencing laws do not allow for it as they are currently written.

The way our laws are currently written, you can certify a child up to adult court, where they are not eligible for boot camp or drug court in the adult system, but they are eligible for prison. You can send a 14-year-old to prison but you cannot put him or her into boot camp or drug court to get them services, so the only other option is prison. The mandatory minimums do not allow the judge to do anything but sentence them to a 3-year sentence. It is very important that the judge has the ability to deviate.

In 2000, Judge Robert Gaston and I appeared before the Legislature and introduced blended sentencing, which Assemblyman Fumo was referring to, which would allow the state to sentence a juvenile halfway in juvenile court and halfway into adult court. If you were sentencing a 16-year-old, he or she would be able to spend 2 to 5 years in juvenile court and then the juvenile judge would be able to determine whether the child goes up to adult court. Other states do use that method of sentencing. I do not know what the district attorneys' thought is on that at this time. On behalf of Nevada Attorneys for Criminal Justice, we do support A.B. 218.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office, and representing Nevada District Attorneys Association:

Before I give my testimony I want to thank Assemblyman Hambrick and James Dold for working with us to address our concerns with A.B. 218. The Nevada District Attorneys Association has been supportive of juvenile justice reform in the past. Assembly Bill 267 of the 78th Session which Mr. Dold referred to was supported by our office.

Prior to getting into the mechanics of A.B. 218, I need to explain how a juvenile is transferred into the adult system in Nevada. Understanding that process is important in understanding A.B. 218 and the proposed amendments. There are two ways for a child to get into the adult system in Nevada. One is a process that is called "certification" and the second is a process called a "direct file." Certification, which is governed by *Nevada Revised Statutes* (NRS) 62B.390, requires a motion by the district attorney and a decision by a judge. Specifically, we can move to certify a certain group of juveniles. Two factors govern certification: the age of the child and the crime the child committed. For example, if a child is 14 years of age or older and commits a felony, he or she can be certified as an adult. In that situation, the district attorney would file a motion and the judge would decide. A child who is between the ages of 13 and 15 and charged with murder or attempted murder can be certified. A child who is between the ages of 16 and 17 and is charged with sexual assault involving the use or threatened use of force or violence may be certified. A child who is 17 years old and charged with an offense or attempted offense involving the use or threatened use of a firearm may be certified. You can see we are talking about felonies, and serious felonies, with respect to certification.

If any of you is interested in viewing a certification hearing, let me know and I will connect you with Brigid Duffy, Director of the Juvenile Division of the Office of the Clark County District Attorney. They are interesting hearings to watch; in fact, I think you would be

amazed at the level of detail that we go into with respect to these juveniles and the certification process.

We get extensive reports on their background; they undergo extensive psychological exams and medical exams. Many times after reviewing these reports, the district attorneys negotiate the case to include remaining in the juvenile system. We undergo significant evaluations of these children. Once the formal hearing happens, the judge considers what we call the "decisional matrix." The question the judge is ultimately answering is, Does the public's safety regarding this child demand certification? They look for numerous factors to see if the case has prosecutive merit; is there probable cause; are there facts to support the case; what is the nature and seriousness of the offense; and what is the defendant's background. We also look at subjective factors such as the child's developmental and mental competence, abuse, or emotional or behavioral problems the child may have. In many instances, the weight does come in favor of the child remaining in the juvenile system. Sometimes the juvenile system is not the best place for the child.

We file an average of 100 certifications every year. In 2016 we filed 168; 68 of those were negotiated, 21 were denied, 51 were granted. The 51 that were granted had ten prior referrals to the juvenile system. This means that they had ten prior instances in which they committed a crime in Nevada. That means they committed one of the crimes that I listed in respect to who is eligible for certification. With certification, some of those cases were adults who committed the crime when they were a juvenile but were not caught until they were adults. Remember, with the juvenile system we lose jurisdiction no matter when the juvenile turns 21 years old. If we have a 21-year-old who committed a sexual assault, and we have three months to work with them, frankly that is not enough time. That is a factor we use when looking at whether we should certify that child.

The second process is called a "direct file." That is governed by *Nevada Revised Statutes* (NRS) 62B.330. There is no judicial review with a direct file, but the cases are more severe and the background of the child is slightly different. The cases that are sent directly to the adult criminal division are 16- to 17-year-olds who are charged with murder or attempted murder. Remember, if they are between 13 to 15 years of age, we move to certify with respect to murder. We also direct file 16- to 17-year-olds who are charged with sexual assault with use of force or violence and if they have a prior felony adjudication; and children 16 to 17 years old who are charged with an offense involving the use or threatened use of force involving a firearm, and if they have a prior felony adjudication. We also have what we call the "Columbine factor," which is a felony resulting in death or substantial bodily harm committed on school property with pupils or employees present, or who may have been present.

Our direct file numbers for 2016 were 28. If you recall the testimony with Jack Martin and Brigid Duffy at the beginning of session, they told you that there were 12,418 referrals to the juvenile justice system. Of those, the Office of the District Attorney filed 5,651. We certified or direct filed 79 cases; that is 0.6 percent of all cases referred to the juvenile

justice system, or 1.3 percent of all cases the district attorney has filed in juvenile court. We are talking about a small number of youth who commit serious offenses.

One example that we recently certified is still pending in criminal court: multiple juveniles broke into a victim's home, they held the husband at gunpoint and knifepoint, and they threatened the children and grandmother. Three of the juveniles sexually assaulted the wife while the husband was inside being held at gunpoint. We are talking about very serious cases. That being said, we understand that there are situations that do require departure in the criminal courts. That is why we do support the amendments (Exhibit C) that both Mr. Dold and Assemblyman Hambrick have agreed to, allowing a criminal judge to depart up to 35 percent of a sentence in situations they deem appropriate. That is a good compromise in allowing a judge to say, I want to give this child a break. With that amendment, the district attorneys are here in support of A.B. 218.

I would like to address two issues. The first is *Nevada Revised Statutes* (NRS) 62B.370, which allows a child to transfer their case back to juvenile court. It does not happen very often because of the serious nature of the crimes. Regarding Assemblyman Fumo's question on retroactivity, we would give it a strong no on retroactivity. The reason is that you have victims whose case is closed, who have been promised a particular sentence, and then are told, "Oh, wait a minute, we have to go through the entire sentencing processes again." We just do not want to do that to our victims. That is the main reason why the Nevada District Attorneys Association would oppose that particular provision.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
We are in support of A.B. 218 as amended. We would have liked the stronger language and the other provisions, but we understand the need to cooperate with the District Attorney's Offices. We appreciate the work that James Dold has put into this bill with Assemblyman Hambrick. We do see it as an enhancement of A.B. 267 of the 78th Session.

The American Civil Liberties Union (ACLU) of Nevada is part of a working group consisting of Mr. Dold, our organization, and a variety of stellar criminal defense attorneys who are offering their legal services pro bono to assist some of the individuals who are now eligible for parole under A.B. 267 of the 78th Session.

The most recent numbers that we received are 86 individuals that have been identified who are currently in the Nevada Department of Corrections: 42 of those individuals have received hearings, 18 were released, and 7 are waiting for housing placement.

I had the pleasure of working with one of these attorneys on a case for one of four individuals who did not qualify under A.B. 267 of the 78th Session because the crime committed resulted in the death of more than one person. We are hoping to find relief for that individual under *Miller*. When I am talking to the individual, we think about what would have happened if a judge could have weighed in on the sentencing. This individual was 14 years old when the crime was committed. He was a bystander and not the main perpetrator, but he was sentenced to life without parole. If a judge had been able to take his

age and that sensitivity into consideration, he probably would not have spent his entire life in prison. For these reasons, we are strongly in support of A.B. 218.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I echo the sentiments of my colleagues from Nevada Attorneys for Criminal Justice and the ACLU. We support the bill; we liked the way it was originally written but will still support it with the amendments.

Assemblyman Fumo:
Mr. Jones, you said that there is just a small number of youth who are being certified into the adult justice court. If it is such a small number of youth, then it should not burden the system to go back retroactively. I understand your point that victims need closure, but if your job is to seek justice and not merely convict, then surely the small number of cases that would go back to the court would not be such a burden on the courts. If we are torturing a child in prison, perhaps justice would be better served by sending them to a better program.

I would support the bill as originally written. The amendment troubles me because we elect judges because we trust their judgment, and this amendment appears to take away their discretion and tie their hands at certain times.

John Jones:
Even though it is a small number relative to the number of people who we have in the juvenile system, we are still talking about approximately 70 to 100 youth every year. If you read the types of charges, they all have victims. We are talking about 70 to 100 victims over the course of many years. We are talking about a large number of cases, for many of which the victims do have closure. We did support some retroactivity provisions in A.B. 267 of the 78th Session that were slightly different from what we are talking about here. In respect to a closed case where a victim has received closure, we would oppose reopening that case.

Assemblyman Watkins:
I have concerns when I read about judicial discretion in sentencing, when we know that at least in the urban populations, the judiciary does not reflect the diversity of the population. Are there any safeguards in the system that can at least study and report to the Committee and to the judiciary, that the sentencing being administered against the youth or adults is disparate in regards to ethnicity, national origin, or anything along those lines? I see a large percentage of discretion, and I worry that it might mean discretion for some and not for everyone.

John Jones:
Discretion is built-in everywhere in our system. In this particular case, there is discretion with respect to the Office of the District Attorney which seeks to certify, and there is discretion with respect to the juvenile court judge on whether to certify that individual. In the adult court, there is discretion with respect to how to negotiate that case,

and there is discretion on behalf of the judge. I understand your point, but when you look at all those different factors, there is a lot of discretion built-in. I think there is a reason for that; we want an individualized look at every case. People do bring varying degrees of backgrounds and perspectives. Two district attorneys may have a different perspective on an individual case. In fact, that does happen. I do appreciate your point about diversity on the bench, which is something we are trying to change in Clark County.

In terms of a study, I am not aware of one. I know, as the Nevada District Attorneys Association, we are looking into a prison study. We are trying to work with the University of Nevada, Las Vegas to figure out who is in our prisons, why they are in prison, and what their backgrounds are. With all of the talk we have had in Nevada about prison reform and criminal justice reform, we know very little about our prison population. It is difficult for us as district attorneys to say they deserve to be there, and it is hard for public defenders to say they do not deserve to be there. When you look at the macro level, we have no idea who is in our prisons.

Assemblyman Hansen:
Over the years, I have come to respect the opinions of Brigid Duffy, whom you mentioned, and this is her field of expertise. Does anyone know where she stands on this? If not, I would like to make an appeal to find out her thoughts on this matter.

John Jones:
When you heard from her at the beginning of session, she told you about the lengthy process we go through in respect to certifications. In fact, I outlined most of that today. In respect to the children we are certifying, I would say Ms. Duffy would say we are getting it right. I will have her follow up with you and explain her opinions on this bill.

Assemblyman Hansen:
It would be a good idea to share it with all the members of the Committee.

Assemblyman Pickard:
I find it ironic that I would ever be on the side of the ACLU; however, I am leaning in that direction. From my perspective, we do have elected judges. Knowing so many of the judges, I do not necessarily share my fellow Assemblyman's concern about giving them too much discretion. Since they are elected officials, I appreciate the fact that the 35 percent figure is a compromise. I certainly appreciate the need for compromise in the political process. What I hear you saying is that you would rather have an arbitrary limitation than allow the court to do what they may think is actually right. I am wondering if that is really your position, or if the compromise was simply because you had to come up with something that you all agreed on?

John Jones:
The 35 percent is not a figure that we came up with; it was in the original bill. We are willing to have discussions with the Committee in respect to that number. We are comfortable with 35 percent, which is a significant departure.

When we talk about mandatory minimums, there are only a few cases in which probation is not allowed. They are very significant crimes, such as murder in the first or second degree; kidnapping in the first degree; sexual assault, or attempted sexual assault of a child who is less than 16 years old; and lewdness with a child. Further, there are additional enhancements with respect to the use of a deadly weapon, a gang enhancement, or elderly enhancement. We are talking about a few crimes that are extremely serious. Those are the situations when the judge does not have discretion in respect to probation or prison, and rightfully so, due to the violent nature of those offenses.

With respect to every other crime in Nevada, the judges have discretion with respect to probation or prison. They can shave a significant time off those sentences if they find that this particular juvenile is susceptible to rehabilitation. For example, a juvenile is sentenced to a 12- to 30-month sentence; the judge feels that a 35 percent departure is appropriate, so he or she sentences that child to 8 to 30 months in prison.

You heard Connie Bisbee, Chairman of the State Board of Parole Commissioners, say yesterday that they start releasing people about three months prior to their expiration date. About five months before their possible parole hearing, and if they are susceptible to rehabilitation as the court thought, the chance that a juvenile will get parole is high. It does not include the time spent in jail prejudication, which could eat up, potentially, three to four months. What we are talking about, ultimately, is a month or two in prison if judges feel that they need to depart in the sentencing. In consideration of the credits, we are talking about a small amount of time. Granted, we are talking about the lives of individuals, and any amount of time in prison is significant. When you look at how our system operates, the 35 percent does seem to be appropriate.

Assemblyman Pickard:
I agree with everything you just said. The knot in my stomach is about the one case where the judge says 35 percent is not enough but we have tied his hands. My personal view is that we should give that judge, in that one case, the ability to do what he thinks is right.

Chairman Yeager:
I want to say, Ms. Welborn, I am happy that the ACLU of Nevada is here fighting for the liberty and constitutional rights of all citizens.

Holly Welborn:
Yesterday I went to Assemblyman Pickard's office and I promised his secretary that by the end of the session, he was going to love the ACLU. I do want to address Assemblyman Watkins' question. Our national organization has done an in-depth study on judicial discretion and abuse of discretion in different jurisdictions across the country. I will send a copy of that report to you. We are also looking at when the judge is making a departure from a sentencing scheme; we are looking at it in the context of sentencing in general. We are studying what are the best recommendations for judges when they are departing, what kind of reports need to be completed, what do those reports look like, and what kind of oversight can we have to keep a balance on whatever abuses may occur.

Chairman Yeager:
I think that report could be very helpful for the Committee. In terms of our prison population and who is in our prisons, probably 80 percent of those come from Clark County, which means they are prosecuted by the District Attorney's Office and defended by the Public Defender's Office. If there is an appetite to find that out, I think we could work together with southern Nevada to get a good picture of who is in our prisons. Obviously, there are some obstacles, as we are not great with information sharing, but hopefully going forward we can make that a priority. I think it would help this Committee and future legislators in making decisions.

Is there anyone else who would like to testify in support of A.B. 218? [There was no one.] Is there anyone in opposition?

Tonja Brown, Private Citizen, Carson City, Nevada:
We appreciate the work that has been done on A.B. 218. The initial version of A.B. 267 of the 78th Session was good and straightforward. In the second version, Ms. Bisbee added a disqualifier in the text that states, if there is more than one death ". . . two or more . . . ."

Chairman Yeager:
Ms. Brown, we are talking about A.B. 218 right now. If you could hold your remarks to this bill, it would be helpful.

Tonja Brown:
For example, a 14-year-old goes into his school and shoots and kills one teacher. Because every person under the juvenile limit has the underdeveloped brain, this juvenile offender does receive the benefits of A.B. 267 of the 78th Session provision: No life without parole and all sentences received are aggregated into a 20-year minimum for parole eligibility. However, case number two has a 14-year-old boy who goes to his school and kills two teachers. The second boy has the same psychologically proven undeveloped brain, and must be held to the less culpability standard. The Nevada juvenile law does not apply to the second boy. Common sense tells us that any criminal conduct done by a juvenile cannot be held to adult standards of culpability and punishment. Whether the criminal conduct causes one death or more, the juvenile cannot be held to a different standard than the other juveniles. Is the brain of a juvenile who kills two people somehow more developed than the juvenile who kills only one person? Or does the second death so greatly overwhelm the reasoning that juveniles must be less culpable? I truly believe that the Nevada Legislature should follow California's lead from their Senate Bill No. 261 of 2015, which increased the age of juvenile offenders to age 23. This move to increase the juvenile age threshold makes the law more in line with current science evaluations regarding frontal lobe brain development.

Chairman Yeager:
May I interrupt? Are you in support or opposed to A.B. 218 that was presented today? It sounds like you are talking about other things that you would like to see happen.

Tonja Brown:
I would like to see section 2 amended and removed.

Chairman Yeager:
Ms. Brown, have you had a chance to look at the amendment that was proposed today to this bill?

Tonja Brown:
It says it is deleted.

Chairman Yeager:
I am just trying to make the record clear. Are you in favor or opposed to the bill as amended?

Tonja Brown:
We are in favor of the bill as far as section 2 is being deleted, but we need to look at California's laws. For example, if you have a 14-year-old who commits one murder, he is going to be held at one standard. If he commits two murders, he is going to be held at the adult standard.

Chairman Yeager:
I understand that, Ms. Brown. I do not want to put words into your mouth, but it sounds like you support the bill but would like to see it go further.

Tonja Brown:
Correct. I would like to add this letter from an inmate into the record (Exhibit E).

Chairman Yeager:
Is it about this particular bill? Do you have something in writing?

Tonja Brown:
Yes, I do, and I will submit it for the record along with the amendment, because A.B. 267 of the 78th Session was better before it was amended in 2015.

Chairman Yeager:
Is there anyone else who is in opposition? [There was no one.] Is there anyone in the neutral position? [There was no one.]

Assemblyman Hambrick:
I am grateful to the Committee for the time and attention you have given this bill. I sincerely hope in your deliberations you will act favorably upon it.

James Dold:
Thank you for allowing us to testify. There were many great points brought up. From our perspective, it really is about creating a more fair, just, and equitable system for children.

As the Committee deliberates, we would be happy to help in any way we can. We are in support of any amendments that will give judges more discretion in fairer sentencing for children. Again, I want to thank Assemblyman Hambrick and yourself, as we have worked together in the past, and I am happy to be able to present before your Committee.

Chairman Yeager:
I know that the two of you have been tireless advocates for youth, particularly exploited youth, and those in our criminal justice system. I had the opportunity to work with Mr. Dold on Assembly Bill 146 of the 77th Session, which was a servitude bill, and then Assembly Bill 67 of the 77th Session, the sex trafficking bill, and then A.B. 267 of the 78th Session. I wanted both of you to know that since A.B. 267 of the 78th Session went into law, I have had a number of former youth reach out to me, many of whom were not my clients, but reached out and expressed appreciation. There seemed to be a real sense of hope for youth who had been sentenced to very long sentences, including life sentences, who thought they would never have a chance to get out of prison. Giving them that hope from A.B. 267 of the 78th Session has made a huge impact on the lives of some of these individuals. So, Assemblyman Hambrick and Mr. Dold, I want to thank you for your work on A.B. 267 of the 78th Session and let you know it is working as intended.

We will close the hearing on A.B. 218. That is our last bill on the agenda for today. Is there any public comment? [There was none.] The meeting is adjourned [at 9:18 a.m.].

RESPECTFULLY SUBMITTED:

_____
Janet Jones
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a proposed amendment to Assembly Bill 218, submitted by Nevada District Attorneys Association, and referenced by James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth, Washington, D.C.

Exhibit D is a proposed amendment to Assembly Bill 218, presented by Assemblyman John Hambrick, Assembly District No. 2.

Exhibit E is a letter dated February 18, 2017, in opposition to Assembly Bill 267 of the 78th Session, from Russell Crew, inmate 18444, Lovelock Correctional Center, Lovelock, Nevada.