MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
March 6, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:27 a.m. on Monday, March 6, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblyman James Ohrenschall, Vice 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

COMMITTEE MEMBERS ABSENT:

Assemblyman Jim Wheeler (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman John Hambrick, Assembly District No. 2

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager
Linda Whimple, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth
Sara Kruzan, Private Citizen, California
John J. Piro, Deputy Public Defender, Clark County Public Defender's Office
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
Brigid J. Duffy, Director, Juvenile Division, Clark County District Attorney's Office
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
Natasha Thorn, Private Citizen, Las Vegas, Nevada
Kristina Wildeveld, Attorney, Nevada Association for Criminal Justice
Richard McCann, Executive Director, Nevada Association of Public Safety Officers
Dave Doyle, Director of Operations, Eagle Quest, Las Vegas, Nevada
John (Jack) Martin, Director, Department of Juvenile Justice Services, Clark County
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Ross Armstrong, Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services

Chairman Yeager:
[Roll was called and protocol was explained.] We have two bills on the agenda today, and we will go out of order and start with Assembly Bill 216. With respect to Assembly Bill 185, there is still a possibility that we may have to reschedule it. We are waiting for a couple of witnesses to come from Reno, and it is my understanding that traffic is at a standstill in Washoe Valley. Keep that in mind, and I will try to let everyone know as soon as I can if we need to move A.B. 185. For now, we are going to leave it there in the hopes that things clear up and we will be able to get to it this morning. We will open the hearing on Assembly Bill 216.

Assembly Bill 216: Makes various changes relating to the prosecution of certain persons. (BDR 5-293)

Assemblyman John Hambrick, Assembly District No. 2:
Assembly Bill 216 is a very difficult bill to talk about and try to appreciate the nuances of it. I realize there will be friendly amendments and that the district attorneys have some

questions. Not too many years ago, victims of human trafficking would be called prostitutes. Now the justice system, including the United States Attorneys, are using the term "victims," because they are all victims, regardless of circumstances. Even the legal brothels, according to the Department of Justice, are all victims of trafficking. All of us have seen the stories and pictures of the beatings and abuse these victims go through. A victim of trafficking gets to a point in his or her life and, in a moment in time, this victim reaches out in frustration to defend him- or herself, whether it is with golf clubs, a lamp, or a chair. I think we could all understand it.

That was my intent with this bill. It was not my intent to have that moment in time stretch on six, seven, or eight months and come back and do harm. Mr. Dold is on the line, we have a witness, and I think the testimony you are about to hear is extremely compelling.

James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth:
I am a human rights lawyer based out of Washington, D.C. As I mentioned in my previous testimony last week, I have been working in Nevada for the past several years on a variety of issues, ranging from anti-human trafficking efforts to efforts in making sure there are more fair and age-appropriate sentencing guidelines and standards in place for when children commit serious crimes. Assembly Bill 216 focuses on child victims who commit crimes against their abusers and what types of penalties we should have in place when those incidents happen.

I would like to give a background about how I got involved working on this specific issue. It goes back about seven years when I was in the anti-human trafficking organization, Polaris Project. One of the first things that was brought to my attention was a case of a young woman by the name of Sara, who is on the line today and who will be providing her own testimony regarding her experiences. At that time, Sara was serving a life-without-parole sentence for a crime that she had committed when she was 16 years old. Sara had been sentenced to life without parole for having killed her extremely abusive pimp and trafficker.

At that time, the Polaris Project and several other anti-human trafficking organizations felt that that was a severe injustice and that no child, particularly in that circumstance, should have ever been exposed to a penalty that severe. We worked with her attorneys at Perkins Coie and several other local advocates in the California area to get then-Governor Schwarzenegger to commute her sentence, which he did. For me, it raised the issue of kids serving these extreme sentences. What I came to learn about these kids was that they were some of the most victimized and vulnerable kids in our society. It did not necessarily excuse the illegal conduct they engaged in, but it helped me to really understand the circumstances in the neighborhoods and environments that a lot of these kids were growing up in.

For instance, over 80 percent of the kids who were serving life without parole sentences had witnessed violence in their homes and neighborhoods on a regular basis. More than 50 percent of boys and 80 percent of girls had been physically abused. More than 20 percent

of boys and 77 percent of girls were sexually abused. It was against this backdrop and the emerging whole-brain and behavioral development science that our legal standards began to shift over the last 10 to 15 years and started with some of the recent U.S. Supreme Court cases regarding extreme sentencing of juvenile offenders. We have talked about this in the past, but the underlying opinions in *Roper v. Simmons* [543 U.S. 551 (2005)], *Graham v. Florida* [560 U.S. 48 (2010)], *Miller v. Alabama* [567 U.S. 460 (2012)], and most recently, *Montgomery v. Louisiana* [136 S. Ct. 718 (2016)], created a new area of constitutional jurisprudence, which is that kids are different for the purposes of sentencing under the *Constitution of the United States*. The underpinning was that this new juvenile behavioral development science showed there were fundamental differences between juvenile and adult brains. Specifically, the prefrontal cortex is not fully developed in child offenders the way it is in adults. Children actually rely on a more primitive and emotive part of the brain called the amygdala to process information and make decisions. It is one of the reasons children tend to be more impetuous and more prone to risk-taking, susceptible to peer pressure, and not as likely to think through the long-term consequences of their decisions in the here and now.

At the same time, this also helps us understand that kids' personalities are not as well fixed as adults. I think most people can reflect back on a time when they were fifteen or sixteen years old and know they are not the same person as they are today. This suggests that children have a heightened capacity for growth and rehabilitation over time. This led the U.S. Supreme Court to find that the penological justifications, the ideas of retribution and incapacitation for the harshest possible punishments, are lessened because of children's diminished culpability relative to that of adults. The focus of the justice system, when children come into contact with it, really should be on rehabilitation. I think this background helps form our discussion today.

While children who commit serious crimes must be held accountable for their crimes, which may include the use of significant or lengthy prison sentences, there is a fundamental distinction between children who commit crimes more generally, and children who commit crimes against individuals who have significantly harmed or abused them in the past. I know there are a couple of examples that have been submitted into the record which I think the Committee members have before them. I would like to highlight a couple of these so you can understand the types of cases we are talking about and what we are trying to do in terms of creating a new legal standard by which to hold these children accountable.

One of the cases, which was featured on the Oprah Winfrey show in 2010, was the case of a 16-year-old boy by the name of Daniel (Exhibit C). Since he was 12 years old, he had been sexually molested by a man by the name of Duane Hurley. The abuse started like most sexually abusive situations where adults are abusing children with a grooming process. Duane found Daniel when he was walking home from school one day, asked him if he wanted to pet his dog, invited him over, got to know the family, and the family began to trust him. It was a year later that the sexual abuse began occurring. It continued for three years. One day, Daniel lashed out and killed Duane. In that particular case, the judge, recognizing the severity of the circumstances and also recognizing the fact that Daniel had been molested

by Duane for three years and this was a horrific situation, decided that he should not be subject to the same punishment because of the unique circumstance of his particular case. In that case, the judge gave Daniel probation. I think he had to spend about six months in jail while the trial was pending, but his final punishment was six months of probation. Fortunately, Daniel was luckier than most kids that we see in these similar situations.

One of the other stories highlights the case of a young 15-year-old girl who was a sex trafficking victim (Exhibit D). She participated in a crime where her pimp trafficker was killed. She was sentenced to life with parole after 21 years. Her trafficker was 35 years old. That case just happened about 2 1/2 to 3 years ago out of Ohio. Even though there is recognition that sex trafficking victims are victims and that we need to treat them differently, when they lash out and commit crimes against their abusers, they are very much being sentenced as if none of that history or background was there. Sara, who is on the line, will share her story a little later on, but I wanted to give the Committee a background of the types of cases and situations that we are trying to create this new standard, so that we are not sending children to prison for decades who commit crimes against people who have severely harmed them by sexually molesting them or sex trafficking them, as in the case of 16-year-old Daniel or the other young woman that I mentioned before.

It is important to understand that we have a very significant problem with these issues in the United States. Our child protection services across the country estimate that there are about 63,000 children who are sexually abused each year. About 1 in 9 girls and 1 in 53 boys under the age of 18 experience sexual abuse or assault at the hands of an adult; 93 percent of that abuse or assault is committed by an individual that the child knows. Children who are victims of sexual assaults are four times more likely to become addicted to drugs, four times as likely to experience post-traumatic stress disorder, and three times more likely to experience a major depressive episode. These traumatic experiences have very long-lasting effects on children who go through these very terrible things. Sometimes the effect is they gravitate towards more destructive means, and other times it means that they are going to be susceptible to victimization as they continue to get older.

There have been many fascinating studies that have been done more recently by the National Institute of Health, which suggest that early childhood abuse and traumatic exposure to traumatic events actually lessens a person's life expectancy. There is an increased likelihood of drug abuse and addiction. In 2015, the National Center for Missing and Exploited Children estimated that 1 in 6 endangered runaways are likely child sex trafficking victims and that approximately 100,000 U.S. children are sexually exploited every year. Child victims of sex trafficking are often subjected to physical and sexual abuse by their traffickers, and sometimes there are buyers who exploit and rape them. There were about 3.6 million incidents of child abuse and neglect which were reported to state and local agencies in the United States in 2015 involving 6.6 million children in 2015.

It is really important to also understand the background of many of these children and what happens to them psychologically as they are going through these experiences. Dr. Michael Welner, a forensic psychologist, talks about how abusers often make their

victims undergo prolonged stages of grooming. That is, targeting the victim, gaining the victim's trust, filling a need, isolating the child, sexualizing the relationship, and then maintaining control. Dr. Welner [page 2, (Exhibit C)] states that, "A skillful abuser gets into the child's DNA and becomes a part of the child, and the child cannot cast him off, regardless of the age." That is reflective again in some of those stories that I mentioned before and are entered into the record. These grooming tactics lead to traumatic bonding, in which a victim develops a dysfunctional attachment to his or her abuser. Traumatic bonding is characterized by misplaced loyalty and is found in situations of exploitative cults, incestuous families, or in hostage or kidnapping situations. Over the years, questions have referred to similar abnormal psychological attachments, such as Stockholm syndrome, and in the case of domestic violence, battered person syndrome, which takes place in different abusive situations. That phenomenon, coupled with the fact that children's brains are not fully developed, prevent them from understanding the consequences of their actions as it relates to individuals who have committed severe abuse against them. Children cannot control their emotions and impulses and cannot evaluate risks in the same manner as adults.

In addition, children who suffer from repeated and brutal victimization often have no way of understanding that they could be incarcerated for an action that they believe is in self-defense against their abuser. This leads me to the inadequacy of self-defense, as some people might be wondering in the case of Daniel or in the case of the 15-year-old sex trafficking victim I referenced before, why could they not just claim self-defense. Oftentimes, self-defense is a very strict standard, which is sometimes very difficult to meet in that particular moment. Under *Nevada Revised Statutes* (NRS) 200.200, in regards to killing in self-defense, for example, a person must show that a danger was so urgent and pressing that in order to save the person's own life or prevent great bodily harm, the killing was absolutely necessary. For many child victims of sexual abuse or trafficking, they are not always in situations where the danger is so urgent and pressing, under the legal definition, when they commit the crimes against their abusers.

For example, in the case involving Daniel, the abuse had been going on for so long. Daniel was over at the abuser's house one day, and he picked up a knife and started to go off on the guy. He stabbed him several times and killed him. Under the legal definition, Daniel would not have been able to claim self-defense, yet given the circumstances of that particular situation, I think most people would agree that he should not be subject to a lengthy prison sentence in the same way that other kids or adults should be subject to very severe prison consequences for committing a crime against a random person. That is really what this is about. We hope that some public policy would dictate that children who commit crimes against their abusers are provided with treatment and services, not criminal punishment. After all, the child would not have committed a crime if it were not for the abuser having physically or sexually abused or trafficked the child in the first place. Therefore, the law really should focus on treatment, not punishment, of the child victim offender. That leads us to the legislation and a brief overview.

There are two subsections of section 1 in A.B. 216. The first subsection creates a presumption that a child who commits an offense against the person who sexually or

physically abused them or trafficked the child acted in self-defense. Again, that is going back to the defense not necessarily being adequate to recognize some of the unique circumstances that some of these kids would find themselves in. Subsection 2 specifies that if it is shown by clear and convincing evidence—which is a pretty high standard—that the person who the crime was committed against abused or trafficked the child, the child shall be subject to the jurisdiction of juvenile court, and institute services for rehabilitation and reentry into society. What we are saying—particularly in subsection 2, which I think is one of the most important aspects of the legislation—is that if you have a child who commits a crime against someone who has sexually abused them or has trafficked them, that they should be subject to the jurisdiction of the juvenile court where the focus is going to be on rehabilitation, and should not be transferred into the adult criminal justice system where they could face a potential life sentence for a significant amount of time. Under Nevada law, twenty years would be the mandatory minimum sentence if it was the first murder that was committed against a sex trafficker. Focusing in on the unique circumstances of the child victim offender and the need to treat him or her differently than other types of offenders who commit similar offenses is based on the fact that the crime is being committed against the person who has perpetuated a human rights violation against the child and who either sexually abused or trafficked them.

Section 3 specifies the allowance for the introduction of evidence of intimate partner battering or traumatic bonding and its effects by either the prosecutor or the defense. This is to make sure that any relevant evidence relating to these sets of circumstances—where you have traumatic bonding, a child sex trafficking victim, or a victim of domestic violence—is able to be introduced as evidence relating to whatever the issue at hand might be. This is significant because one of the things that happened in Sara's case was that there was a lot of evidence relating to her psychological state of mind and everything that had happened leading up to her crime, which was excluded at her original trial, and it was, I think, one of the reasons why she ended up in the situation that she did. Again, this is meant to protect people and allow them to introduce evidence of intimate partner battering or traumatic bonding and its effects.

I know that in some of these sections there have been some amendments that have been proposed by the public defender's offices—and Assemblyman Hambrick has mentioned them before—and I think with the prosecuting attorney's office as well, and we are open to working with them. The main focus that we want to get at is making sure that when we have children who are in situations like Sara, whom you will hear from in a little bit, or a kid like Daniel, or the other young woman that I mentioned, that we are not transferring them into the adult criminal justice system; that we firmly recognize that they are victims and that they should be treated in a more age-appropriate manner, which means keeping them in the juvenile justice system. It is a way that we can hold them accountable while also protecting public safety; focusing on their unique circumstances and on providing rehabilitation services to them; recognizing them as victims in their own right and not seeking punishment for a crime that, had it not been for the abuser in the first instance abusing, would never have happened in the first place.

Chairman Yeager:
I see one amendment on the Nevada Electronic Legislative Information System, and it appears to be from the public defenders. I believe there was another amendment referenced. Is there another amendment? If so, is someone else going to present that today?

James Dold:
We are hoping to work with the district attorneys on a prospective amendment. I know we have talked to them about being open to it and we have been in conversation about it, but I do not think there has been one that has been drafted as of yet.

Chairman Yeager:
That is helpful. Perhaps we will see it when it comes time for testimony.

Assemblyman Elliot T. Anderson:
I think there are some legally problematic parts to this. I am wondering about your willingness to change some of them. I have not looked at the amendments yet, so if you have already agreed to it, that is great. I am looking at section 1, subsection 1. I am a bit concerned about having a straight-up presumption. While I agree that generally, in most cases, you are going to have the situation develop as you have mentioned, I would be a lot more comfortable with a rebuttable presumption. You cannot anticipate every single thing that is going to happen in a courtroom, and if you do a presumption, it is shut off. The finder of fact legally cannot make any findings contrary to the presumption. Would you talk about that and willingness or lack thereof to change it to a rebuttal presumption?

James Dold:
We have talked with the district attorneys about deleting that section wholesale and focusing on subsection 2 so we can keep the kids in the juvenile court system and not have to deal with the presumption or a rebuttable presumption. I believe that some of those issues were raised before. The main focus would be on subsection 2, so I think the issue you raised is one of the things that has been brought up in the past. If you want to change that section or delete it wholesale, I do not think that would be a huge problem for what we are trying to get at, in terms of treating these kids differently.

Assemblyman Elliot T. Anderson:
Excellent. My second question has to do with section 3, subsection 1. You are presenting this bill as something for kids, but this whole section and NRS Chapter 48 is general admissibility for evidence—unless I am reading it wrong, this applies to every criminal case—and that seems a bit problematic to me if we are trying to focus on children. I think it brings up a whole new issue that you did not raise in your testimony as to adult defendants. I think it goes a bit outside the scope.

I also wanted to get into the micro with that section as to lines 26 and 27 on page 4. Generally, battered woman syndrome is thought of as a defense to first-degree or second-degree homicide to get it down to manslaughter. The criminal attorneys can correct me if I am wrong. I have never seen battered woman syndrome thought of as being

admissible for any relevant purpose. It always seems a bit more tied down than that. Would you comment on those issues and help me figure out exactly what you are trying to get to? It seems like a broad admissibility, and I think it is going to lead to propensity being considered by the jury, even though it says in subsection 2 that it cannot be.

James Dold:
This provision is similar to one that California has. In Sara's case, this was one of the things that was also going on in her case at the time, right before Governor Schwarzenegger commuted her sentence. Former California Attorney General Kamala Harris eventually conceded that Sara should have been able to present evidence of intimate partner battering at the time of her trial. So getting to the issue that you raised as a mitigating aspect, she should not have been subjected to a charge of first-degree murder, but potentially a lower count of manslaughter. That is what this section was intended to get at.

Some of the concerns you raised are also some of the concerns the district attorneys have, and I know that John Jones will probably talk about that. If this section is particularly problematic, not having it in the bill at all and focusing on the other section would allow the state to keep those kids in the juvenile system. In terms of the genesis of this section, it was meant to be a section where defendants in similar circumstances—or even in the context of a prosecutor who wants to talk to the jury about why a victim might be recanting. One of the issues that we always had in the anti-human trafficking movement, and in working with prosecutors, was the fact that oftentimes the victims would recant their testimony or would not show up or would act in ways that were helpful to the prosecution in trying to prosecute traffickers, so we wanted this section to go both ways to be helpful to both defense attorneys as well as prosecutors. I also realize that it has raised a number of concerns by both the public defender's office and the prosecutors, but I wanted to explain the genesis for this section.

Assemblyman Elliot T. Anderson:
I appreciate that information. I think the more tied down it is, the better. We are getting into bigger scopes if you apply it to all cases generally. I would much prefer this be tied down to the scope of what you have envisioned and not get us into any other issues that are not fully developed in front of a committee. I think that is important.

When you talk about it being offered by the prosecution because the victim is not showing up or recanting, that gets into a whole new arena of confrontation issues. I would encourage you to narrowly tailor these new rules to get at the situation you are talking about in general. We need to provide good legislative intent for when these things are ultimately litigated, and I would not like for us to have a whole discussion about child victims, have it be applied to other cases, and then have it just be a legal mess. I hope we can do some good for kids who have been abused and not get into the weeds of different situations that we have not considered.

Assemblyman Pickard:
In section 3, we are talking about expert testimony on traumatic bonding. I know that as we are dealing with experts in criminal cases as well as civil cases, we have to make sure that the methodologies are sound and that the diagnoses or at least the demonstrations that have to be made have to be on sound science. Because I am not familiar with the intimate partner battering cases, particularly traumatic bonding, as a diagnosis or a defense, I do not know if there are methodologies that will make sure these stand the test under a *Daubert* or similar standard. In my own practice, we see domestic allegations misused frequently in a domestic case context. If we start getting into some of these things and we need to understand the psychological background behind it, I want to make sure that we know for certain that these methodologies are proven and accepted within the psychological community. Would you comment on that for me?

James Dold:
This was actually the subsection 3 that you brought up and was the same amendment that I think was related to what the public defenders had specified. One of the things they wanted to change in their amendment was that nothing in this section is intended to govern the admissibility of evidence under NRS 48.045. It would get to your concerns, just more broadly. That section would still have to be governed by the rules of evidence and a judge would still have to make a ruling, both as to its relevancy and also whether it is a technique that should be admitted into evidence.

Assemblyman Pickard:
I appreciate that, but my question really speaks to whether or not those methodologies exist in the current state of the treatment plan or the diagnoses, and whether or not it is in the *Diagnostic and Statistical Manual of Mental Disorders DSM-4* or *DSM-5*, which has not been adopted yet in Nevada. Do those methodologies exist? If we are writing this into law, are we doing so with the understanding that this will pass muster?

James Dold:
I am not 100 percent sure on the new and updated standards under the *DSM*. I know there has been significant research which has validated the issue of traumatic bonding, its existence and impact on a victim. It is very similar to Stockholm syndrome—a battered person syndrome—which has been recognized under law in other states, such as California, where these issues have come up and have been validated. I would need to go back and look at the *DSM* and get a specific citation for you, because I do not have a direct answer for that question.

Assemblyman Watkins:
I certainly appreciate the intent of the bill, and anything that I am talking about here is not in any way intended to dismantle the intent of the bill. In section 3, subsection 3, I think what is particularly troubling for the lawyers up here is that it is routinely the job of the district court and the trial judge to make a determination of whether or not the expert testimony that is being proffered is going to be helpful to the jury for determination of any fact. That analysis requires reliable principles reliably applied, and I do not think there is anywhere in the statute

that conclusively says or dictates to them that this is sound science and you must accept it. I think you can get to your intent if you provide the judge with discretion in the application of factors that you want considered, and maybe that is what the parties need to get together.

Assemblywoman Cohen:
I echo the other attorneys who have already asked questions that we are behind the intent of the bill and concerned with the application to some extent. I want to play with some scenarios and situations with this bill. What if you have a teenage trafficking victim who lashes out as we have discussed, but instead of lashing out against her trafficker, it is the trafficker's henchman. Does this still apply and give her some protection? Using that same situation, what if the henchman is another minor? We know there are situations where there are other minors who are also being trafficked that are being used as enforcers against their fellow minors in these criminal enterprises. Does this still protect that child?

Assemblyman Hambrick:
The person you are talking about, the henchman—forgive the language—is the "top bitch." That is the term of art. At this point, I would prefer that Mr. Dold step in to manage the law and interpretation.

James Dold:
In that scenario, the trafficking statutes are quite broad, so when we look at the sex trafficking of a minor, it is anyone who essentially recruits, induces, maintains, or obtains a person for the purposes of commercial sexual exploitation of a person under the age of 18. In the situation where you have one of the henchman who is in effect colluding with the pimp/trafficker, that defense would also apply to that particular individual. That is important, too, because oftentimes we see a collusion of sex traffickers or pimps. They operate in a way where they enforce the rules of the game, so to speak, so together they keep all of the girls in line and make sure no one is breaking the rules. For example, you might have several pimps who are out on the street and they see one of the girls with another pimp, and they will go up to her and say all sorts of horrible things. The girls are not actually allowed to walk on the sidewalk when pimps are around. They have to walk in the gutter. So if a girl is caught walking on the street, other pimps are allowed to go up and say and do certain things to her and take her money. Under the confines of this bill, if the person that the crime is committed against meets the tactical definition of a human trafficker under Nevada law, then the bill would apply to her.

Going back to what Assemblyman Hambrick was referring to, the "bottom" girl will oftentimes enforce the same rules of the game. That defense would also apply to her as well in that situation. One of the difficult things, particularly when you are talking about trafficking victims and the bottom girls is that, because they are there also, they are victims as well, but they are using intense forms of violence against the girls in the same way that the pimps are. Sometimes, under state and federal laws, we see these women get prosecuted under the trafficking statutes. Again, going back to the technical definition, if someone can

be prosecuted or it can be shown that they were, in fact, acting as a trafficker by using those methods of coercion to compel someone into that type of exploited situation, then under the confines of this bill, that situation would also apply to them.

Assemblywoman Cohen:
If a trafficked girl attacked someone below the head trafficker, would she still be protected under this bill?

James Dold:
If the bottom girl could be technically prosecuted as a trafficker herself for the types of activity that she engaged in, then yes, the same protections would be afforded to the victim who committed a crime against her as well.

Assemblywoman Cohen:
When she lashes out, instead of her killing her head trafficker, she kills someone who is at a lower level than that, is she still protected?

James Dold:
That is correct.

Chairman Yeager:
Are there any questions? [There were none.] Mr. Dold, did you want the other person on the phone to testify at this point or wait until we go to supporting testimony?

James Dold:
I think it would be great if Sara could testify now.

Sara Kruzan, Private Citizen, California:
I just want to share that I hold a strong belief that no child wakes up and wants to be sexually abused, insulted, degraded, and dehumanized by an adult. There are so many children who have had dreams with such a beautiful intention behind that purpose. I was one of those children. I had a strong desire to be a pediatric surgeon. When I was in grade school my drive and determination reflected in so many of my achievements. When I was in the fourth, fifth, and sixth grades, those were some of the most magical moments for me. Even though I was faced with layers of abuse in my home, I had a hope that one day I would be able to break free and live a good life. School was my outlet, and it showed. I was on the principal's honor roll, I had a 4.0 grade point average, and I was voted student body president. But things changed for me (Exhibit E).

One day, as I was walking home from school, George Howard showed up and changed my life forever. He drove up next to me, lured me in his car, and before I knew it, I was at his house and my underwear was on the floor. As I think back now as an adult, looking back, the memory of my underwear on the floor is emblazoned upon my other self. The fear that I had experienced in this whole situation taught me how to remove myself. What is known

as disassociation to the event that is causing the harm then became a normal response to the inflictions, discomfort, and trauma in my life. And GG soon became my sex trafficker, the relationship that developed between him and me was extremely distorted.

He also managed to develop a relationship with my mother. It was so uncomfortable to see that this man was in my house and engaging in what appeared to be pleasant conversation with my mom. I was very afraid of my mom and having taken on the role of making sure that she was okay, as a young person, I did not want to do anything to disrupt her life in any way. My mother suffered from borderline personality disorder, and that caused acute stress within the walls of my home, and school was my only outlet.

Even though GG's indoctrination was calculated, he would offer appealing charms. Charms as small as food or even taking me roller skating. And he also took on the distorted role of a father figure. GG found ways to break me down. During this period of time, within three years of coming into contact with GG, I was gang-raped three times by three gang members on the grounds of my school while we were out. These were the same stepping stones that I would use to excel to the next level in my education. After that, I just kind of began to cave in, and I no longer wanted to be engaged in my own life.

By the time I was 13, I was being sold to some of the most evil men in the world. I was a frail, physically underdeveloped child of 13, 14, 15, and 16, who was having my life taken from me from the inside out each time a grown man would glorify sexual needs upon me. The scars on my body were a visual reminder of what once was. The adults in my life did not have much regard. I myself began not to have regard for my own life, and my dreams of being a doctor turned into unhealed pain for a positive future. There were times when I would wish for my body to catch up with my heart and soul, hoping that death would rescue me from the unwanted and undeserved circumstances of my life.

I recognized that kids like me at that point are fundamentally different in degrees of culpability in situations like I have faced. There was the lack of resources that were unavailable for me at the time and the language and the understanding of the dynamics of what was happening to me. Human sex traffickers will kill you if you want out, or they will burn you or scar you and do unthinkable acts to remind you that you are no longer a person but just a commodity.

When I killed GG at the age of 16, I know my act was extremely horrible, but there was a part of me that was glad that it was going to be over. There were no laws or even language to define and understand what my situation was, let alone help me to understand. It is not that I am whining. I just want to give some insight after going through the system. The lack of information that was not available for me as well as those who were overseeing my process through juvenile hall, the county jail, the California Youth Authority (CYA), the adult prison, and the trauma continued—the degrading, being stripped naked repeatedly for years, all the while serving my life without parole sentence. While I was in adult prison facing my life without parole, I did come across this book; and I just want to say that Viktor Frankl's message for me, many parts of that book resonated with me, and I was able to find strength in

the experience that he himself was experiencing when he was in Auschwitz going through what he went through. I made the decision to survive in spite of what the reality might show. As a survivor and overcoming this is not an easy journey, for the experience has left haunting shadows upon my very being.

I am 39 years old now. I have been out of prison for three years. I am a mom, and I just simply ask that no other child goes through what I have had to go through. I firmly believe that as a parent now, as an aware adult, that we are responsible for our youth in our community, and we have the ability to restore what has been taken away from people, especially young people. Offering us resources to heal the trauma instead of offering up punitive damages will be lifesaving on so many levels. With that, I just want to say thank you for your time on this special issue.

Chairman Yeager:
Thank you for your testimony. Is there anyone in Carson City who would like to testify in support of A.B. 216? [There was no one.] Is there anyone in Las Vegas who would like to testify in support of the bill? [There was no one.] Is there anyone in Carson City or Las Vegas who would like to testify in opposition to A.B. 216?

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:
I do not like coming to the table in opposition of this bill because we generally support this bill and everything that it is trying to accomplish. I think the testimony that was just offered was extremely powerful, and that is why this bill is necessary.

There is a problem which resides in section 3, subsection 3. I think Mr. Dold understands that as well, and we proposed an amendment to correct some of the issues with this bill (Exhibit F). Part of the problem is when you are offering expert testimony under the Sixth Amendment, defendants are allowed to challenge it under the Confrontation Clause. The way this language is drafted in section 3 may limit that challenge. With our amendment, we would like to eliminate subsection 3 and just indicate that nothing in this section is intended to govern admissibility under NRS 48.045, which is the evidence statute that deals with prior bad acts. That might limit the propensity evidence which Assemblyman Anderson spoke about earlier. If that were to be eliminated, I believe we could fully support this bill.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
I echo the sentiments of my colleague, Mr. John Piro. We certainly support the spirit and intent of what this bill is trying to accomplish. I do not relish coming up here in opposition, so that is the reason we proposed the amendment to section 3, subsection 3. To reiterate Assemblyman Watkin's point, we believe the trial judge is in the best position with the application of these factors, so that is the need for our amendment.

Assemblyman Watkins:
In stating that you would be supportive of the bill with that change, is that under the

understanding that the change noted by Mr. Dold would be made in section 1 by deleting subsection 1, but keeping what is now currently subsection 2 of section 1? Or are you in support of section 1 as it is written in this bill?

John Piro:
We are in support of subsection 1. I believe Mr. Anderson offered a proposal that would possibly make that section more fair with the rebuttal presumption language.

Assemblyman Watkins:
It is encouraging in the discussions with both sides to look at the fact that we have two competing standards of proof in section 1 and section 2. We go from a presumption of self-defense, but in order to get there, we have to have clear and convincing evidence of one of those definitions stated in section 1, subsection 1, paragraphs (a), (b), and (c). That is not directly conflicting, but it creates an extra hurdle that does not seem to make sense to me. I tend to think that deleting section 1, including the definitions of (a), (b), and (c) and subsection 2, would make the most sense.

Assemblyman Elliot T. Anderson:
I will open this up to both of you because I have not heard a lot of discussion about the broader effects of this bill. I am trying to understand exactly how some of these provisions might be used. I brought up the issue of a prosecution using some of the evidence in section 3, subsection 1. Would you give me an example of how it might be used? I understand how a defense attorney might use it as a defense to first-degree or second-degree homicide in section 3, subsection 1. How would this language be utilized in court? How would you expect the prosecution to use it?

Sean Sullivan:
It depends. Every case is different and the fact scenario is different. It depends on what type of case the prosecution brings, but our concern is basically putting forth the best possible defense we can for whomever we may be representing. We believe the trial court is in the best position for listing the evidence, determining whether or not certain evidence is first and foremost relevant and then, second, if it is admissible. It is hard for me to answer the question specifically without having a fact scenario before me, but we hope and put our faith in the trial judges that they would first and foremost determine whether something is relevant and whether it is admissible.

[Assemblyman Ohrenschall assumed the Chair.]

Assemblyman Elliot T. Anderson:
I do not really have a follow-up, but if we cannot envision how this language is going to be used, I think it is a little concerning.

Vice Chairman Ohrenschall:
Are there any questions? [There were none.] Is there any other testimony you wish to offer?

John Piro:
No, thank you.

Vice Chairman Ohrenschall:
Is there anyone else who wishes to speak in opposition to A.B. 216?

[Assemblyman Yeager reassumed the Chair.]

Brigid J. Duffy, Director, Juvenile Division, Clark County District Attorney's Office:
I am the director of the Juvenile Division, and I am here today in opposition to A.B. 216. John Jones and I had a fabulous conversation with Mr. Dold on Thursday afternoon, and he understands where our opposition comes from. Section 1 is written so broadly that our 16- and 17-year-olds who commit murder or attempt murder under a sex defense defined in NRS 432B.100 could just be another child who smacks someone on the butt at school or grabs their breast or exposes themselves. It is so broadly written to not be the intent of this bill that we are in complete opposition to section 1, subsection 1.

As to subsection 2, I think that was the bulk of our conversation around making something work. Ms. Kruzan's testimony is extremely compelling, and those of you who have had me in front of you before know how far we have come in the Juvenile Division to treat children who are sex trafficked as victims. Over the course of the last few legislative sessions and with Assemblyman Hambrick being one of the biggest supporters, we no longer charge children with prostitution and solicitation. We work with them in the juvenile justice system because they are victims, and Ms. Kruzan's testimony of the horrific things that she went through was 23 years ago. I think we have come a long way in our community and in our state in realizing that these are child victims and we need to address them as children and to help them.

What subsection 2 does not do is go as far as to consider what that process is going to be for that clear and convincing evidence hearing, where that hearing takes place, how long do they have to raise that as a defense if it is the very first moment they are arrested. We know from our law enforcement partners that when they go to a crime scene of a murder, if they believe it is an act of self-defense, they will let the district attorney's office know that in advance. We do not have a place within this section to know when a child—if you continue down this course of the testimony of a traumatic brain—will ultimately tell someone that they are the victim of sex trafficking. It could be in the middle of a jury trial for murder. Then we stop and have a clear and convincing evidence hearing. Who has that hearing? The juvenile court? A justice court? The district court in the criminal division? Where do we process that? What if the court does not find that clear and convincing evidence? What is the process to revert it back to the juvenile court for adjudication?

Ultimately, I have two issues. The first issue is most of the children who end up being filed into the criminal justice system have had multiple referrals and services already in the juvenile system—on average, ten of them. Where is that in consideration of what more we can do before transferring a child to the adult system? The child who is likely to have

committed this offense will more likely than not have already been through whatever services we have to offer within that juvenile justice system to help treat and rehabilitate and save that child from his life. The second issue is that we only have jurisdiction in the juvenile justice system until they turn 21. The only facility that we have for females—although this can cross both male and female—is an unlocked facility in the Caliente Youth Center, which is only a 6- to 8-month program. We lack a lot of infrastructure within the juvenile justice system right now to really handle these types of issues. There is a lot to work out. I know that Mr. Dold is an amazing advocate for these children—and I enjoy my conversations with him. I found out he enjoys Nevada so much because we all believe in the same things for these kids, but we have to build the front end first before we just start reverting them back. I will defer to John Jones about section 3.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
We are in opposition to this bill. I want to thank Assemblyman Hambrick and James Dold for meeting with us. As Ms. Duffy indicated, we had over an hour-long conversation trying to work through our differences on this bill. We have committed to continue working, but it is extremely difficult—as well-meaning as this bill is—to fit the intent into the system that we have in Nevada. Specifically, with respect to section 3, we have concerns with the wording (Exhibit G). I understand what the intent is, but we want to make sure that anything we put in statute is narrowly tailored to address the conduct that the sponsor is trying to allow or prohibit.

With respect to the amendment offered by the public defenders' offices, I have some concerns that it is going to limit the state's ability to present some of this evidence. I know Mr. Dold indicated that his intent was for both prosecutors and defense attorneys to avail themselves of this statute. An example I can see is when victims show up but the victim waited a lengthy period of time before disclosing, or other factors that we could use this expert testimony to help show why a victim acted the way they did. That could be helpful from a prosecution standpoint.

Assemblyman Elliot T. Anderson:
If we cannot envision how language is going to be used, I do not think we should be pushing language forward. We have to have that understanding and some idea of what it is going to do. Would you help me figure out exactly how the state might use it? We all understand how the defense might use it, if it is a battered woman syndrome defense to homicide to bringing it down to manslaughter.

John Jones:
Are you specifically referring to section 3?

Assemblyman Elliot T. Anderson:
Section 3, subsection 1.

John Jones:
I would use the example that I briefly gave earlier, when you have a victim who acts in a way that the state has to explain why he or she acted that way for a jury of 12 people who may not have the knowledge of how a victim would act in a particular situation. I think the best example I can give are late disclosures of people who wait a period of time before they disclose a piece of information. Maybe we could use section 1 to help explain that delay to a jury.

Assemblyman Elliot T. Anderson:
Is there something in law that prohibits you from doing that now?

John Jones:
No, there is not currently. This would just make it absolutely clear that we could use the evidence.

Chairman Yeager:
Are there any other questions? [There were none.] Is there anyone else who would like to testify in opposition to A.B. 216? [There was no one.] Is there anyone in Las Vegas who would like to testify in the neutral position? [There was no one.] Is there anyone in Carson City who would like to testify in the neutral position?

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
We are very much in support of the spirit of this legislation, but when we start going through the complexities of what this can mean in actual practice, we have to defer to the practitioners, the public defender's offices, and the district attorneys. I am confident that working with James Dold and working on making sure it is more procedurally clear on how this can work, we can have better outcomes for our youth. For those reasons, we are currently neutral and hope to move into a place of support for this legislation.

Chairman Yeager:
Is there anyone else in the neutral position? [There was no one.] Mr. Hambrick, would you like to make any concluding remarks?

Assemblyman Hambrick:
I truly appreciate the time and attention you have given this bill. There are some very difficult topics that we are dealing with, and there are difficult questions that you will have to address and resolve in your work session. I sincerely hope that you give this bill a positive review. It is the spirit of the bill, and you have Ms. Kruzan's testimony and both sides of this issue.

Chairman Yeager:
Mr. Dold, would you like to make any concluding remarks?

James Dold:
No. Thank you very much for your time. To echo what Assemblyman Hambrick said, the intention of this bill is to prevent children who are in situations similar to Sara from being victimized by being forced to serve out a lengthy prison sentence. The focus should really be on rehabilitation for those kids, and that is what this bill is about.

Chairman Yeager:
I think the testimony shed some light on the real difficulties in this bill and practical concerns with how it might be implemented. I would encourage all interested parties to continue to work together to see if there is some kind of a consensus. That would be my suggestion going forward on A.B. 216. With that being said, I will close the hearing on A.B. 216. We have everyone we need for the next bill, so we will proceed with it. We will now formally open the hearing on Assembly Bill 185.

Assembly Bill 185: Revises provisions regarding juvenile justice. (BDR 5-287)

Assemblyman James Ohrenschall, Assembly District No. 12:
Assembly Bill 185 is a very good complement to the bill you just heard. Much of the testimony heard from Mr. Dold, from Washington, D.C., really rings true to the reason I am sponsoring A.B. 185. Going back to our country's history and creating juvenile courts, the model was meant to be different from the adult court system. The model of the juvenile delinquency court was meant to be about rehabilitation, about trying to figure out what is going wrong in the child's life and what the system—for lack of a better term—can do.

In Nevada, we have a great system, and a lot of services are provided to kids who need it. There are a lot of kids with undiagnosed drug abuse issues and mental health issues who first get diagnosed when they show up in front of a juvenile court judge or a juvenile probation officer, when a clinical evaluation is ordered. That is a very positive thing. The model is a good model. It is meant to rehabilitate these children.

Since the 1800s and the forming of juvenile courts in our country, there has been a lot of science that you heard Mr. Dold talk about. There has been a lot of science that shows that the frontal cortex of a child's brain does not develop until the age of 25. What it means is that decision-making skills for teenagers are not the same as what we expect of an adult. They are much more given to impulsivity in making decisions, and the culpability and the understanding of these decisions that are made, as we now know, is not the same as an adult's. Our highest court in the land has recognized this fact by getting rid of capital punishment for youth. The science has translated through to the courts, and they understand that a child's brain is not as developed as an adult.

The goal of A.B. 185 is taking that into account and is looking at the ultimate goal of what we try to provide youth, in the hopes that they will not end up in the adult system for a lifetime. Assembly Bill 185 is divided into two parts. The first part has to do with pre-adjudicated youth where prosecutors are seeking to take them to the adult system; it changes the default—the default being that the child is housed in a juvenile facility.

However, if the prosecutor believes that the child is dangerous and should not be in a juvenile facility, they can still ask a juvenile court judge to transfer the child to an adult facility. Currently under Nevada law, it is the converse. The default for such pre-adjudicated children seeking to be prosecuted in the adult system is to house them in the adult jail in a youth pod, but still in the adult jail, and then the defense attorney does have an opportunity, if they choose to, to ask the juvenile court judge to transfer those children back to the juvenile detention facility.

The second part of the bill has to do with post-adjudicated youth. We have a number of children—boys, at least—under the age of 18 who are housed at the Lovelock Correctional Center. I tried to get the exact number. I contacted the Department of Corrections (NDOC), and unfortunately, I have not received the information back. I believe it is fewer than 20. They are in a facility at Lovelock Correctional Center. They are sight and sound separated, but still in an adult facility. I believe there is one female, although I do not have the data as to where she is housed. This bill would change the default and have the default be that these children, who have been convicted of adult offenses but are still under 18, would be housed in a juvenile facility at least until they turn 18. If they were considered too dangerous or not suitable to be in a juvenile facility, there would still be an opportunity to transfer them to an adult facility. Nothing is foreclosed in A.B. 185.

Why should we offer these children this opportunity? These children have been convicted of adult offenses. There are many reasons, and one of the primary reasons is services: services that children receive in juvenile facilities—whether it is mental health counseling, substance abuse counseling, education—things that even though a child may have been convicted of an adult offense, we want them to receive. As a society, we hope that this child will not be caught in that prison pipeline that we hear so much about. We hope that services can still be given to that child and that they may be able to reform their future.

As to the pre-adjudicated youth, there is an even more compelling argument. They should be housed with their peers of their own age in a juvenile detention facility where services are certainly much greater and more available than what would be available in an adult facility. There are a few statistics I would like to cite from an organization called the Campaign for Youth Justice. It is from their December 2015 Executive Summary (Exhibit H). On page 2, there are two statistics that I find particularly compelling:

> Placement of youth in adult prisons disproportionately falls on youth of color. Youth of color are placed in adult prisons at much higher rates than their white peers. African American youth are particularly harmed. While they represent only 17 percent of the overall youth population, they make up 58 percent of those incarcerated in adult prisons. This disproportionality extends to Latino and Tribal youth, who also continue to be vastly over represented in adult prisons compared to their white peers.
>
> Data also indicates that youth are more likely to recidivate when they are held with adults. "According to both the U.S. Centers for Disease Control and

> Prevention and the Office of Juvenile Justice and Delinquency Prevention, youth who are transferred from the juvenile court system to the adult criminal system are approximately 34 percent more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime."

This is information which is compelling towards the passage of A.B. 185. Does it require changing the status quo? Yes. It will not foreclose the safety valve for those facilities if they feel a child is just completely unsuitable to be in a youth facility. That will still be there, but I believe it will give these children a better chance of hopefully not being subject to the other bills this Committee considers in terms of adult offenders.

[(Exhibit I) is a February 23, 2017 response from Sheila Lambert, Grant and Policy Administrator, Nevada Department of Corrections to Assemblyman Ohrenschall's request for information on youth currently housed at the Nevada Department of Corrections]

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
At the last count, and according to numbers that were provided to the Advisory Commission on the Administration of Justice, there are nine children currently housed at Lovelock. Three of those individuals are expected to age out this year and be moved. Right now they are currently segregated from the general population due to the Prison Rape Elimination Act (PREA) and the Juvenile Justice and Delinquency Prevention Act (JJDPA). They are not integrated with adult offenders within Lovelock, but they will transfer into the general population at Lovelock this year.

There are some misconceptions about what PREA and the JJDPA provide (Exhibit J). There is a misconception that a child who is certified as an adult needs to be segregated from other juveniles in the jail system. That is not a requirement under PREA or JJDPA. It just requires sight and sound separation from other adults. Many states have operated under the presumption that because the child is technically in the adult system, they cannot be integrated into the juvenile system. Many states have done what Assemblyman Ohrenschall wants to do with this piece of legislation, which is certifying—they have done it in a couple of different ways, but this seems to be the most simple. We make sure that any child who is in a juvenile facility gets the services they need that are appropriate for juveniles, and once they have graduated out of that system and they have aged out, they can go into the adult facility.

Some of the things that young people face and some of the other reasons for moving those children are the types of abuses and educational opportunities that children face and being able to be integrated with their peers. Since Assembly Bill 267 of the 78th Session passed, we find ourselves in the position that most of these children who are currently housed in Lovelock may be eligible for parole at one point in the future. That being the case, we need to prepare those individuals for life outside of prison, and that includes having some semblance of a childhood, and having some semblance of juvenile programming that is appropriate for that person. It is something that they do not get in the Lovelock detention facility in the same way that they do in juvenile facilities.

More statistics from the Bureau of Justice Statistics (Exhibit K) include that 75.5 percent of youthful inmates aged 16 and 17 who reported sexual abuse were victimized by individuals within the prison system. Seventy-nine percent of youth reported experiencing physical force or threat of force while in an adult facility. A recent study by the American Academy of Pediatrics found that "cumulative incarceration duration during adolescence and early adulthood is independently associated with worse physical and mental health later in adulthood." These are just some of the statistics and some of the reasons for releasing those children and putting them in a juvenile facility.

Assemblyman Pickard:
I personally support the idea of treating children as children. I think it is important, particularly since we understand the brain development aspect, that we take it into account. In cases where a youth has been sentenced to an adult facility, my understanding is that now he will be removed to the juvenile detention facility. Will prosecutors or corrections officers have an opportunity to weigh in prior to that removal? Are we going to make sure that there is a review of those cases before that happens?

Assemblyman Ohrenschall:
My understanding of the legislation, if it were passed, would be that section 2 of the bill would provide the opportunity to a prosecutor. If a prosecutor felt that this juvenile, who had been convicted of an adult offense, was of such a character that it would not be appropriate to be housed at a juvenile detention facility, they would then have the opportunity to make the argument to the judge.

Assemblyman Pickard:
Perhaps we could tighten up the language so it is clear that it would occur before the removal takes place. I am comfortable with it as written. In order to be clear and for practical purposes, I think we may want to do that. After the previous bill that we heard in this Committee where we talked about services that are available or not available, I had NDOC come up to me and tell me those services are available, even in the adult facilities. It was a different context, so I do not want to take that statement wholesale and apply it here, but are we confident that the same range of services that are available in the juvenile detention facilities are actually unavailable in the adult facilities as they exist today?

Holly Welborn:
They do receive services at Lovelock. The kids get education, and they are eligible for work credits in certain circumstances, so they are receiving some services. It is not a blanket that they are receiving services at the juvenile detention centers and not at Lovelock. It is nine children, they are not associating with other peers, they are not having those interactions, there is not as much sports programming for the juveniles, and there are not as many extracurriculars for the juveniles that are appropriate for their age.

Assemblyman Ohrenschall:
I do not want to speak for any of the agencies or the departments. I know many of them have concerns about this legislation. From practicing in the juvenile court system, certainly there

are many services offered at our youth correctional facilities and a breadth of services, notwithstanding the very noble attempts that I am sure NDOC is making to try to provide services to those nine juveniles at the Lovelock Correctional Center. I do not personally believe that the breadth of services, whether it is psychological counseling or substance abuse counseling, can match what is being offered by our state to the youth in the juvenile detention centers.

Assemblyman Pickard:
Maybe we could have NDOC speak to that. I would be interested to know.

Assemblyman Fumo:
You keep mentioning Lovelock. Would you explain to the Committee what exactly Lovelock is? What types of inmates are housed there with these children who have underdeveloped brains and bodies?

Assemblyman Ohrenschall:
While I certainly do not want to speak for NDOC, my understanding is that Lovelock is a medium security correctional center that mostly houses male sex offenders. I understand that the children who are there are in a sight and sound separate wing which is compliant with the PREA. If I am misspeaking, hopefully someone with NDOC will correct me.

Assemblyman Fumo:
So we have youth offenders in a sex offender prison, there are only nine, and that is part of the reason why they do not have enough programs for these juveniles? Is that correct?

Holly Welborn:
We cannot speak on behalf of NDOC, but that would be my understanding.

Assemblyman Fumo:
In your presentation, you said that the purpose of the juvenile justice system was rehabilitation for these juvenile offenders prior to the age of 18. Do we have anything in Nevada that would help rehabilitate for drugs and alcohol dependency or mental health issues? Many children that I see who are certified up to the adult system really have those two issues. It is mental health and drug and alcohol problems. Do we have a place where we can send them currently in Nevada rather than to an adult prison?

Assemblyman Ohrenschall:
Our state has a lot of different service providers. When you are speaking about a child with an individual diagnosis or dual diagnoses, I think it would depend on who you asked as to whether a facility in state versus a facility out of state might help them more. Certainly there are inpatient drug treatment centers. There are other psychiatric facilities in southern Nevada. I cannot speak for every facility, but there are different therapeutic treatment programs that juveniles might be able to avail themselves of. Certainly, juveniles in the delinquency court system are often sent to inpatient drug treatment or to a residential

treatment center if there are mental health issues in lieu of placement at a youth correctional facility. There are options, and it would be nice if the adult sentencing court might consider them for some of these juveniles.

Assemblywoman Tolles:
It is a great challenge, and what I hear is that we are weighing out what are the potential harms that these youth might be facing in an adult facility versus what the potential harm of these youth in a juvenile facility would be to the other juvenile inmates that are there. Weighing those two things out is where I am processing this. What types of crimes constitute being tried as an adult?

Assemblyman Ohrenschall:
Certainly, the types of crimes can vary, and they would be serious crimes. Assembly Bill 185 is to try to make sure these youth, notwithstanding what they have done or are accused of doing, still have some semblance of a childhood. If a child is convicted under section 2 of an adult offense, then A.B. 185 will not change what happens on their eighteenth birthday. On their eighteenth birthday, if this bill does not pass, they continue to be housed in the youth pod at the Lovelock Correctional Center for the boys. If this bill does pass, Summit View Youth Correctional Center, which is a lock-down facility, is a possible candidate for the nine boys at Lovelock. Under A.B. 185, on their eighteenth birthday, if they are still under that sentence, then they would still be transferred to an adult facility. However, services that could be provided to them while they are still a juvenile could make a difference in terms of how they are going to handle the next few years, if they are not going to be eligible for parole right away and try to work as hard as they can to be eligible for parole and try to get out and hopefully turn their lives around. Certainly, this Committee has heard examples of youths who were convicted of very serious offenses who are now working on reforming legislation and have turned their lives around. I believe that if A.B. 185 passes, we are giving these youths a better chance to hopefully try to stay out of the adult system.

Assemblywoman Cohen:
If a child is certified up, is rehabilitation still a goal?

Holly Welborn:
There was a time when it was not, but with the changes in NDOC, it is now a rehabilitative goal for many of the inmates who will eventually be leaving the Nevada prison system.

Assemblyman Pickard:
If we were to bring these likely violent youth into the same population as the other juvenile offenders, what protections are there to protect the other juvenile offenders that are now encountering these potentially violent offenders who have been removed from the adult system and brought into the juvenile system?

Holly Welborn:
We can work on refining the language in section 2, subsection 1 for those processes. There will be a way of determining how violent that child is before he is placed in a juvenile

facility. Look at the children who are currently in, for example, Summit View Youth Correctional Center. Many of those offenders and young people who are in that facility have committed some very violent crimes that are just short of crimes for certification. I do not think we are looking at two drastically different populations. Then there is the issue of regionalization, where there is an intermixing of more violent offenders with less violent offenders who are already intermixed at Summit View and some of these other juvenile detention facilities in the state. I think it is a case-by-case inquiry determining exactly how violent that child might be.

Assemblyman Ohrenschall:
The way I read the bill and the way I intend the bill to be interpreted, and I hope that the language comports with my understanding, is that, let us say that one of these youths at a youth facility did something to lose that right, then a hearing before the judge would still be a possibility to ask that the youth be transferred. In my opinion, that would weigh in that child's mind as to their behavior at that facility, not being transferred to an adult facility.

Assemblyman Pickard:
I appreciate that. My concern is that these nine youths have already been determined to be more dangerous, and it is more appropriate for them to be housed in an adult facility as it is. My concern is that we make sure we are not overlooking something in this idea of moving them to a juvenile facility.

Assemblyman Ohrenschall:
Under current law, the default is to go to an adult facility. So the sentencing judge has not made a determination that it is more appropriate that they be at an adult facility versus a juvenile facility. If A.B. 185 were passed into law, it would give the sentencing judge that discretion to determine if it is a child who may have had mental health issues, substance abuse issues, got recruited and jumped into a gang at a young age, and really did not have the intelligence quota to be able to make the kinds of decisions that should lead to adult culpability. Those are decisions that are not being made now by the sentencing judge, but A.B. 185 would allow the sentencing judge to take into consideration.

Chairman Yeager:
Is there anyone in Las Vegas or Carson City who would like to testify in support of A.B. 185?

Natasha Thorn, Private Citizen, Las Vegas, Nevada:
I am the mother of a child who is currently being held in the adult system. He has been there for two and a half years. He was taken to an adult jail the day after he was taken off a ventilator from a children's trauma intensive care unit. He was transported to Clark County Detention Center. He was severely ill at 14 years old. This particular child is also autistic. Mentally, he is a lot more like a 10-year-old child. He has never walked to a grocery store by himself, held a girl's hand, attempted to drive a vehicle. He is very immature. He had never had any violent behavior before, and he had the presidential honor award in school. He is a Boy Scout who played the saxophone in jazz band. He is an absolutely nonviolent and

amazing child. He made a mistake by attempting suicide by cop, and in doing so endangered other people, which was not his intention. He should have been convicted of the crime of discharging a firearm into an occupied structure, which would not have gotten him any attempted murder charges or put him into an adult system. He has the diagnosis of Asperger's from a neuropsychologist, which is on the autism spectrum. He was recommended by two different psychologists to be treated for mental health issues: post-traumatic stress disorder, depression, and autism. We went to court, and he was able to be accepted into one of these facilities you are discussing for mental health for children. There is one that exists in Nevada, which is called Desert Willow. I had an acceptance letter for my child. Instead of being sent there, where Desert Willow Treatment Center even said they would provide judges' discretion for when he was released from their program, which is a six-month to a year program. It is a lock-down facility as well. Even if these children who have mental health issues have done something violent, whether it was in an attempt to commit suicide like my child, or in an act of defense against someone who is victimizing them, whatever the situation may be, there are places that will help these children if they are treated as children like they should be.

You cannot put a 14-year-old in jail for 7 to 25 years like my son has been sentenced to and expect them to ever live a normal life. If you look into all the facts of these cases, when you let a child, in their formative years where their brains are still developing, grow up in a prison with adults, what are the chances they will ever be able to lead a normal life or be a productive member of society? They should be given the same chances that all the other children are given to have the help they need. None of us at 14 years old are the same person we are today at 30, 40, or 50 years old. We have all made mistakes. Every human being deserves treatment, chances, and medical care.

This child is extremely vulnerable. He is not a violent person. He has been victimized and bullied his whole life by his peers because he is autistic, and it makes people uncomfortable because he cannot follow along with the social cues and gestures like a normal person, not even as well as a 10-year-old, so there is a good chance he could be hurt or injured. When he was in the Clark County Detention Center (CCDC) for two and a half years, he was supposed to follow intensive trauma care. He was shot three times and almost died. They did not take him back to the trauma surgeon. I had to take the jail to court to get them to follow up on it. Had he not been forced to be taken back there, he would have died. He was suffering from an aneurysm that, had it burst, he would have been dead in a matter of minutes. This is a child. They do not tell you, "Hey, I am sick. This is hurting." They do not speak up for themselves. He is in a situation where he is terrified, and, as a mother, I have no rights to help him and he cannot speak for himself. He does not know how. He does not have the skills or ability to speak up. If he says, "I feel like killing myself," then he gets thrown into a cell, naked, with nothing but a blanket, and then they will not let him out until he says, "Okay, I am not going to kill myself now." Anyone would say whatever you want to hear. They are terrified and he is a child. What is being done to help him? He should be in a juvenile facility where he can be getting mental health treatment. He should be in a mental health facility getting the treatment where he would be able to get help and become a productive member of society.

Kristina Wildeveld, Attorney, Nevada Association for Criminal Justice:
I am one of the few criminal attorneys in southern Nevada who practices in both juvenile court and criminal court on a regular basis. Indeed, I represent juveniles in both the juvenile and the adult system. I am here to offer support on behalf of A.B. 185. Every day, minors are charged with serious crimes. After minors are charged, they may wait for a trial date for perhaps a year or two. In that time, the child may progress from a minor into an adult.

Assembly Bill 267 of the 78th Session addressed the issue with regard to sentencing juveniles in the last session, and again, thank you all for your consideration that was given to that bill and the changes that we have seen in the law today. Assembly Bill 185 now addresses the housing of these individuals facing these adult sentences. We heard testimony last week on Assembly Bill 218, which is inherently linked to this bill and indeed gels nicely with the intended goals of this bill.

Again, let us start with the undeniable fact that we keep hearing that juveniles are different than adults. We put them in a cell, and they are still children. Just because the district attorney's office files a document that transfers their case from a juvenile court to an adult court does not mean that their biological clock catches up with that filing. During their incarceration, however, they grow up and mature.

Children change over time, and those drastic changes can take place during the time they are awaiting sentencing, or while they are serving their sentence, or at the beginning of their sentence. I have seen it each year, case after case. I watch caterpillars transform into adults before my eyes. In fact, I often have to keep reminding the court during the pendency of the case that my client was a child when the case began because they change just while the case is pending.

Many states allow a blended sentencing option that would allow the child or adult criminal court to impose sentences in both the adult court and the juvenile correctional system. Many states such as Minnesota, Connecticut, Montana, and Arkansas are examples of this. For example, for a 16-year-old serving a 10-year sentence, the first two years would be served in a juvenile facility. Then there is graduated incarceration where at least 12 states have some sort of this option. Inmates under 18 begin serving sentences in juvenile facilities until they reach 18 years of age, at which time they can be transferred to an adult facility. In some states, they would go back before a juvenile court on their eighteenth birthday for some type of progress report as to how they are adjusting and/or rehabilitating. Still other states have separated incarceration where they assign juveniles to specific facilities based on their age and programming needs.

Nevada, however, is and always has been a straight adult incarceration system. Youth are placed in county detention centers in general population and, if convicted, they remain there until they are transferred to adult prisons. Until the year 2000, kids 18 years and younger served with adults in general population. Around 2000/2001, under the direction of Director Jackie Crawford, the Youthful Offender Program was developed at Southern Desert Correction Center in Indian Springs. Now youth under 18 years old sentenced as adults are

transferred directly from the county jails to PREA at Lovelock, usually four to eight hours away from their nearest relative. It is reported by these youth that they are lucky if a teacher comes to visit them once a month. So these programs that we are talking about—the kids who are housed in Lovelock were having a problem that their teachers were not even coming to visit. They were not coming to pick up homework. They were not even visiting once a month. Brian Connet is in the room next door, and he just called over to Lovelock and confirmed that there are 17 juveniles currently in Lovelock.

The youth in Nevada are now all serving sentences that will one day allow them to return to the streets because of A.B. 267. It would behoove the people of the state of Nevada and the Department of Public Safety to do what we can to make these juveniles the best possible persons that we can while we are responsible for them before returning them to the streets. This is done by making sure that all of the educational opportunities, programming needs, technical training, job skills, and life skills are offered to them so when they do return to the streets, they will be unlikely to ever reoffend, and so that during the remainder of their formative years, the state of Nevada does everything that we can while we have control of them to make sure they are the best citizens that they can be while we are assuming that parental role. It is making sure that during their formative years we are doing everything we can do.

Assemblyman Pickard:
I am certainly sympathetic to the anguish you feel. Assemblyman Ohrenschall suggested in his presentation that the default today is if a child is going to be incarcerated with the adults, that their defense counsel has the opportunity to request a hearing on whether or not that is appropriate. I am wondering if you took advantage of that opportunity.

Natasha Thorn:
Currently, he has two different attorneys working with me on this case as well as an appeal. Because it is in the process, I cannot give you an exact answer right now, but it is definitely something that we are not going to give up on. He is a wonderful child, and I will take every legal course of action possible to make sure he is spoken for and protected. As a mother, I will never give up because he is a really great and a kind person, and he is absolutely in danger being held in an adult facility. And, with being autistic, he would even be in danger in a juvenile facility, but at least then he would be treated for mental health issues, depression, suicidal thoughts, and suicidal attempts. The people who would be coming in to deal with him would not be dealing with 500 other prisoners who are all adults and hardened criminals or people who have lived a life of crime or been in gangs or had severe drug or alcohol issues. None of these things are even issues for my son. He has mental health issues, and just like many children who have attempted suicide or thought about it, it has completely changed the course of his life. Luckily, he is still alive and we still have a chance to fight for him, to protect him and to give him the chance that every child deserves to grow up to be a happy, healthy, and good person. I absolutely believe that eventually we will get to this point and his side of the whole story deserves to be told and he deserves to get all the chances that you are discussing.

The reason for this bill is to protect children. We are not in some crazy society where these kids are just left to be hurt and not protected and defended. We absolutely need to take a look at these issues. In this room, no one even knows how many of these kids are out at this adult prison where you are saying sex offenders are held. Here is a kid who has been there since he was 14 years old, and we think there are 8 of them but there are 17. There are obvious discrepancies between what you believe is being done for these children and what is actually happening.

Assemblyman Ohrenschall:
I do not know the specifics of Ms. Thorn's case and her son. I do not know when he was prosecuted or when he was sentenced. In *Nevada Revised Statutes* (NRS) 62C.030—which are proposed changes to section 1 of my bill—it is my belief that the right of the child to petition for temporary placement in the juvenile facility was a recent addition, perhaps in the last four years. I am not sure if that was an option when her son was going through this prosecution if the only option available was to house the child in the adult jail. My memory might be incorrect, but I believe that that was an addition in the previous one or two sessions, to allow the child and their attorney the right to ask the juvenile court judge to transfer the child to the juvenile facility. As to post-adjudication—a child who has been convicted of an adult offense—the default is the adult prison.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
We are in support of A.B. 185. Having practiced in the adult division for the past 14 years, I recently transferred over to the juvenile division in January of this year. It has been interesting to see the stark contrast between the two divisions. Last year, I had my first adult certification wherein the young man was 15 1/2 at the time of the offense. He was arrested at 17 and immediately placed at the adult detention center. That was the default. It was incumbent upon me and co-counsel to then file the appropriate litigation and motions.

The interesting point to it was that litigation and motions and having matters fully briefed and submitted to the juvenile court takes a lot of time. It took weeks, if not approaching two months, where the juvenile in the interim sat in the adult facility pending this very necessary and vital litigation. Ultimately, we were able to have him transferred back to the Jan Evans Youth Detention Center pending adjudication of his case, and then he was transferred back to the adult facility upon his eighteenth birthday. It was interesting to note how he flourished when he went from the adult jail back to the youth detention center—just watching him go through his education, his counseling, engage with his peers, engage with sports. It was like what we have heard earlier, the caterpillar just blossoming, and I was happy to be a part of that litigation. My understanding, from whenever I used to visit him at the adult jail, was that there were no youth pods. They would have him housed at the medical unit in his own cell, or they would have him housed in an adult unit in his own cell. I asked how it was going for him, and he said he would still be taunted and teased by the adult offenders because they knew he was a juvenile. I believe this piece of legislation is vital to allowing the courts to have the default to be having these youth offenders be at the youth detention centers pending any necessary litigation and having the judges make the appropriate determination based on good cause shown.

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:
We support this legislation as well as echo the concerns of my colleague. I think this legislation is good because it treats kids as kids, but also still allows the flexibility for the state to challenge the child's placement if necessary and also for the judge to decide placement of the juvenile. It would alleviate some of the concerns about the most violent of the juvenile offenders being placed back with the other kids there. It allows us to decide cases on a case-by-case basis, which is the best way to do criminal justice. Criminal justice reform is looking at cases on a case-by-case basis.

Chairman Yeager:
Is there anyone else who would like to testify in support of A.B. 185? [There was no one.] Is there anyone who would like to testify in opposition to A.B. 185? I know there are some fiscal notes attached to the bill, and if that is the basis for opposition, it is certainly appropriate to mention it here, although we will not go into the details of the fiscal impact. That will be for another committee, so to the extent we can stick with the policy concerns, I think that would be tremendously helpful for the Committee.

Richard McCann, Executive Director, Nevada Association of Public Safety Officers:
I am the Executive Director of the Nevada Association of Public Safety Officers. I am also a member of the Nevada Law Enforcement Coalition, and also represent the Clark County Juvenile Probation Officers and Supervisors among the 20 groups that we represent around the state. We oppose A.B. 185, but not because we do not appreciate what has been said all morning on both of these bills. We have an absolute appreciation and respect for it, and we respect Assemblyman Ohrenschall for bringing this bill. I am struck by Assemblywoman Tolles' comments, Assemblyman Pickard's comments, and others about having a balance. We now have a situation where a kid allegedly commits an attempted murder, sexual assault, or a firearms-related issue. Do we put him into an area where he could potentially taint other children by being with them, perhaps not segregated, or perhaps segregated, or put him into an adult area? Either way, if we put him into the adult area, defense counsel has the right to petition to get him back into a juvenile area. You put him into a juvenile area, prosecutors have the right to petition to put him into an adult area. We are basically trying to change the matrix of where we presently are versus where we want to be. From the juvenile justice standpoint, moving juvenile offenders that are qualified to be in the adult system to a juvenile system will heavily tax the juvenile system. My people tell me that security at the facilities is not adequate. Training and arming of the officers is not adequate. Transportation and safety of the juveniles is not currently adequate. There is a reason why the child has been charged or would be placed into an adult situation.

In NRS 62B.330, it states that a "juvenile court has exclusive original jurisdiction" over such things as violations of a county or municipal ordinance, an offense related to tobacco, truancy, disobeying the child's parents—that is what it says in the statute—running away from home, sexting, bullying, curfew, and loitering. I am sure it is not exhaustive; those who are professionals in that industry would be able to correct me, as I am sure it is not exhaustive. It lays a groundwork with why our young people are in the juvenile justice system. It also says in NRS 62B.330 that the juvenile court does not have jurisdiction over a

person who has been charged with committing such acts as murder, attempted murder, sexual assault or attempted sexual assault. And, by the way, if that person with the sexual assault "previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult"—so in other words, that person is a repeat offender; a person who used or threatened to use firearms, and once again, if that person has previously "been adjudicated delinquent for an act that would have been a felony if committed by an adult;" also, felonies, "resulting in death or substantial bodily harm to the victim." Wow. There is a big disparity here. Truancy versus attempted murder.

With all due respect to the children, I am a father, I am a grandfather and most of you fall into that same category in one form or another depending upon your gender. The bottom line is that this is not an assault upon these children. This is a protection of the juvenile justice system. My people, who are the police officers, are involved in that. These people in the juvenile justice system, to my understanding, teach life skills to these youth. There is a service versus a security process. With all due respect to the 16-year-old who was charged with murder, attempted murder, sexual assault, attempted sexual assault, has a background, with all due respect to them, they are a security risk. Not that these juveniles at the juvenile detention center are not, but there is a difference. I think as long as prosecutors have the opportunity of putting these youth back into an adult facility and defense counsel has an opportunity of bringing children back down into the juvenile system, our system works.

Assembly Bill 185 sounds good and it has a great intent in spirit. However, it will keep a population of offenders in the juvenile justice setting that the juvenile justice is not prepared for financially—all you have to do is look at the fiscal notes. We have all seen them and they are intense from a personnel standpoint. Currently, there is a default which places them into the adult system. There is a way of getting them out if someone has a problem with it. I am very conscious of the young lady who testified in Las Vegas a few moments ago. I feel for her, I feel for her family, and I certainly feel for her son. But the system is there to protect him. I do not know if this is necessarily going to change that system other than change the matrix and change the default from one to the other.

That is in addition to the funding issue, which the director of juvenile justice services who I see sitting down there, may address, I do not know. In fact, we appreciate and respect the intentions of the bill sponsors but we do respectfully oppose A.B. 185.

Brigid J. Duffy, Director, Juvenile Division, Clark County District Attorney's Office:
As I reviewed A.B. 185 in determining whether or not I would be coming up to testify in support, opposition, or neutral, I realized that as a prosecutor, is it really that significant to me where a child is housed? As long as the facilities are secure and the community is safe, that really is where my job ends, either pending his adjudication or conviction as an adult or after he is convicted as an adult. But the concern that I have, and why I am here in opposition, is really a policy issue and you are a policy committee and this is where I want you to hear what I have to say.

In speaking with my fantastic partner, there will be a fiscal impact on Clark County. If we have to take the children—I am talking toward section 1—who are awaiting adult trial on an average of 176 days in the CCDC into our juvenile facility, we are going to have to divert all of the monies and funding that we have worked so hard for to keep kids from being certified, to keep kids from being direct filed, to create these programs that Mr. Martin will talk about, so that we can focus on keeping kids out of the adult system. This bill is not coming with money to help me with The Harbor program that you heard me talk about at the beginning. This bill is not coming with help to continue our Evening Reporting Centers, to keep the kids who have committed armed robberies at home on a global positioning system (GPS) with intensive services. It is not coming with money, which means that all of that money we have used for those things is going to go to opening wings at a detention center we have been trying to shut down. The CCDC has incredible programming.

Assemblyman Pickard, I will get you the list of programs that I have promised and give it to the entire Committee. The Clark County School District (CCSD) is inside the juvenile pod at CCDC helping kids get the general educational development exam, or their diplomas if appropriate, kids who are there for long periods of time. There are counseling services for them. They are housed separately from the adults. There are plenty of services. In the juvenile detention facility, which I think the average length of stay is days, our program is very short term. We do not have programming meant to serve kids who could be awaiting for years for a criminal trial. They will be repeating the same programs or will be taking our programs from the streets to keep kids out and putting them into the detention facility. As a policymaking committee, I would love for you to consider that.

Currently, the law allows the child's attorney to petition the court to stay in the juvenile detention facility. We have had plenty of motions filed in juvenile court in front of the juvenile judge, but knowing that the programming is best within the CCDC in their pod, most of those motions are denied. We have one female housed at the juvenile detention facility currently awaiting her adult trial.

As to section 2, my only statement on this section is what if Summit View is not successful? I am hoping it is. I was hoping it was going to be successful when it was privately run, but we are now on the fourth time we have opened this facility. If it is not successful—which again, I have high hopes for what the state is doing, and they are doing a really good job right now—we do not have any other options, if this bill passes, to where we are going to put juveniles who murder people except for Elko and Caliente, which are open-air, walk-away facilities. You have to think about what happens if they are not successful at Summit View for our fourth grand opening.

On the youth that the mother testified to, this Committee, along with the entire legislative body a few sessions ago, passed legislation that would cause that 14-year-old to go before a juvenile judge to be certified where the juvenile court would consider drugs, mental health, and everything else before determining which system would help them better. Before we even certify children into the adult system now, the court is weighing the heinous and egregious nature of the crime versus what the juvenile system can offer. Except for those

16- and 17-year-olds who are directly filed, all of those other youth are being in front of the juvenile court with all the considerations of how we have already serviced them and what else we can give them before sending them to the adult system.

Assemblyman Pickard:
You have raised a significant concern in my mind, and I want to make sure I understand your point. I understood you to say that currently there is no facility set up to do this, and in order to accept these individuals, you would essentially have to consume the funding you have for the other rehabilitation programs for all of the other youth in the facility in order to staff and fully secure this change. Is that accurate?

Brigid Duffy:
Yes. I know that Director Martin is going to be very specific on what it would cost him to have to reopen wings. In section 1 of the bill, which is talking about how prior to your adult trial you are going to be housed in a juvenile facility—which on average could be 176 days—we do not have that infrastructure right now because we have closed wings in the juvenile facility to put services out on the street to help keep kids from being adults committing crimes. We have diverted all the funding, so we will have to go back, pull probation officers off the streets, and reopen those wings in order to take close to 40 kids at CCDC back into the juvenile detention facility.

Dave Doyle, Director of Operations, Eagle Quest, Las Vegas, Nevada:
I am a member of the Clark County Department of Juvenile Justice Services citizen's advisory committee. Although I am not representing the committee as a whole, I have also been a foster parent for the past 13 years for juvenile justice youth who live in my personal home. I believe in the value of youth rehabilitation. I would like to respectfully convey my concerns surrounding A.B. 185 today.

It has already been mentioned about the unfunded mandate and that will be a taxing to the Department of Juvenile Justice Services. Assembly Bill 185 could also potentially add 70 to 80 additional youth to the current detention population. It could potentially double the population of detention over the next several years. As a person who works with youth on a daily basis, I have a very valid concern about mixing the most hardened youth offenders with the general population. As we mentioned with brain science, these youth are still highly influential, and mixing them together could be detrimental to the other youth currently residing in detention.

In addition, the Department of Juvenile Justice Services (DJJS) is on a very progressive path seeking diversion, reducing disproportionality, and promoting gender-specific programming. Assembly Bill 185 may unintentionally derail the progressive path that DJJS is currently on and close progressive programs like The Harbor, also known as the Juvenile Assessment Center, and the Evening Reporting Center. It is my wish that hopefully we can add in enhanced current programming for these youth where they currently reside, such as CCDC and Lovelock, and hopefully we can look at enhanced programming to help those youth where they currently reside.

John (Jack) Martin, Director, Department of Juvenile Justice Services, Clark County:
Thank you for the opportunity to share my thoughts about A.B. 185, which I believe to be a very well-intended bill. As you have laid the groundwork here, I will not spend much time on the fiscal notes. As Assemblyman Pickard mentioned, this will require the deconstruction of several years of hard work in terms of keeping youth out of the juvenile justice system. I believe our job in juvenile justice is to stop the further penetration of juveniles—especially, as Assemblyman Ohrenschall mentioned, kids of color—in further penetration into our system. With that being said, let me paint a little bit of a picture of who we do serve.

In 2016, we served 12,400 individual youth and 12,400 cases. Of that, 4,300 arrived in our detention centers. When we talk about 17 or several other different numbers about how many kids—under 40 at CCDC and 17 at Lovelock. As of this morning, my population is 142. I am funded for 192 beds. The average length of stay in detention is 18 days. That includes state children pending placement. I have 22 children already on waiting lists waiting to go to the state that have already been adjudicated, have been adult-term sentenced to go to the state that have been pending sometimes up to three to four weeks, oftentimes over a month. Now we are talking about housing children up to 15 days. That is going to start to impact.

We have successfully closed three housing units, and we have taken the staff which was allocated to those housing units and opened very progressive, evidence-based, nationally-recognized programs—one of those being the Evening Reporting Center. That is, for lack of a better term, for a youth who would be considered a wobbler, a child who has had some issues in the system who requires far more intensive community supervision but who is not quite at the level where he would be committed to the state. If A.B. 185 were to be implemented or pass, I would have to shut down that program. Currently, the district attorney and the juvenile court judge believe that we are providing appropriate supervision for these youth in the community and that we are stopping the escalation of those children into further detention or further correctional issues. That program would be closed.

Another program we need to mention—and I know my partner, Deputy District Attorney Duffy, along with our community has been a huge proponent of The Harbor. As of today, we have served close to 450 youth and families who would otherwise have been introduced into the juvenile justice system. Of those 450, less than 15 have escalated to the juvenile justice system. If this bill were to pass, we would have to close the doors.

There is another program that we have with 25 officers providing 24-hour intensive supervision of kids in the community. Those are kids who would otherwise be in our detention center that are being supervised, both through technology, GPS, and a very advanced intensive supervision model where we see those kids multiple times during the course of the week. That program would also have to be shut down and all the staff would have to be brought back to our detention center where we would have to reopen three housing units.

You asked me not to speak about fiscal. Please, for those of you in the Committee considering this, look at it. I am going to mention it very quickly. First year we are looking at about a $14 million impact, which is roughly one-third of my total budget. I do not disagree with the well-intended nature of this bill. Children are different. We believe in juvenile justice, and we have been very progressive in designing programs specifically for children to be kept out of our system. We know that children kept out of the evidence-based system are more likely to be successful. While it is well-intended and great in theory, the actual and practical application of it is destructive.

Since 2004, the Juvenile Detention's Alternative Initiative has been a huge motivation for us in Clark County to not only address conditions of confinement, but to improve our programming, to reduce the detention population, and to reduce disparity in our decision-making points. We are attacking this business of juvenile justice on all fronts. While I agree with the intentions of the bill, I cannot stand by and watch the programs that are intended to keep 12,000 kids out of my system. I cannot stand by and not respectfully oppose the implementation of A.B. 185. With that being said, I would encourage any questions.

Chairman Yeager:
Are there any questions from the members? [There were none.] Is there anyone else in Carson City or Las Vegas who would like to testify in opposition of A.B. 185? [There was no one.] Is there anyone in Carson City or Las Vegas who would like to testify in the neutral position?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I am neutral on the bill as written. I believe it is the court and the criminal justice system's decision to determine if the juveniles that we are talking about are certified as adults or if they are treated in the juvenile criminal justice system. Although I am neutral on the bill, I felt compelled to come to the table and make a couple of comments that I think are relative to the bill.

First of all, as I said when I gave a presentation to this body in the first week of the Legislature, violent crime is significantly on the rise in Clark County. We already have 27 murders this year in our jurisdiction. Last year we had 16. We are seeing more and more of those crimes committed by younger juvenile offenders. Just to give you an idea, if you take a moment to Google "Las Vegas juvenile charged with murder," you will get pages and pages of stuff coming up. To give you an example, over the past year three young men committed a home invasion robbery and repeatedly raped a woman at knifepoint while they held her husband at gunpoint.

Another incident that was recently in the news that I am sure you all saw was an up-and-coming Missouri State football player shot and killed in the street in front of his home by a juvenile offender. We had a case not too long ago of a teenager who was out on bail after allegedly committing a number of armed robberies who then shot and killed a

woman in North Las Vegas. The list goes on and on. Yes, I believe that the bill is important. I believe we should look at treating juveniles differently. I believe there is science behind the fact that the juvenile mind is not mature until a certain age. I also want to point out that there are victims involved in all of these cases. There are people whose family members were taken as a result of these crimes, and in some cases these were very serious and horrific crimes. That also needs to be taken into account.

Chairman Yeager:
If A.B. 185 were to be enacted, in most circumstances it seems it would require people in the pre-adjudication stage, juveniles who have not yet been adjudicated, to be held in the juvenile detention center—that would be the default. Would that not save CCDC money in terms of the juvenile population that is there right now?

Chuck Callaway:
Yes.

Chairman Yeager:
Do you know how many juveniles—people who are under 18 years of age—are currently being housed at the CCDC in a pre-adjudicated status?

Chuck Callaway:
I do not know that number today, but I can provide it for the Committee.

Assemblyman Pickard:
What has come to mind here is having to reopen a facility in the juvenile justice system at the expense of all of the other programs which are currently being provided. It comes back to what is going on at CCDC. To your understanding, is CCDC segregating these juveniles so they are not actually exposed to the adult offenders who are housed there pre-adjudication? Are they provided services?

Chuck Callaway:
Yes, that is correct. My understanding is that all of the juvenile offenders are segregated in their own wing and, as the young lady from the district attorney's office testified, we have a number of programs in the jail where we can help people who are inmates—all inmates, whether juvenile or adult—get continuing education, get their high school diploma if they do not have it, and there are other services provided to try to divert them out of the criminal justice system or, in some cases, reintegrate them back into society, depending on if they are going to stay in our facility or potentially move on to another facility.

Assemblyman Pickard:
I am wondering about the cost difference of reopening a facility within the juvenile system versus the cost savings that we would have with the CCDC. Would it be more expensive than to reopen the juvenile facility? Are we really saving any money?

Chuck Callaway:
I have no idea of the cost to open the juvenile facility, but I know that at CCDC it is roughly $140 a day to house an inmate. If we use the numbers, and say hypothetically that the numbers are accurate and we have 40 in our current custody, it would be $140 a day times 40.

Assemblyman Fumo:
My understanding is that CCDC is currently at critical mass. They had to open up the North Valley Complex detention center to alleviate some of the pressure. Do you have any numbers on the children who are at CCDC that are nonviolent offenders?

Chuck Callaway:
My understanding is that the juveniles who are in CCDC have all been certified as adults or they would not be in the facility. Based on that, I would assume they all have some type of violent convictions, probably previous convictions that led the court system or the prosecutors to certify them as adults.

Assemblyman Fumo:
But not everyone who is certified up is a violent offender?

Chuck Callaway:
I am not sure. I would have to look at each individual case to determine if they were violent or nonviolent. Hypothetically, if someone was a repeat offender and they had multiple burglary convictions, I guess the court could theoretically certify them as an adult for that charge. I think in most cases, it is usually crimes against a person.

Assemblyman Fumo:
In using the math, $140 a day with 40 kids is $5,600 a day to add up to over $2 million a year.

Chuck Callaway:
I will trust your math.

Ross Armstrong, Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services:
We operate the facility that would come into play in section 2 of A.B. 185. We are currently neutral on the bill. There has been a lot of discussion about what types of crimes would lead a juvenile to being certified. One of the other important things to remember about the difference in the two systems is that in our juvenile justice system, youth are not sentenced to a fixed amount of time. When they come to one of our facilities, their release and the timing of their release is based on good behavior and conforming to directives and programming with us. Those are not the same incentives for those in the adult system, whether they are under 18 or over 18, who know they have a set amount of time they have to do before they are released. That would be an interesting blending of motives of individuals in our facility.

There are some other things in this bill that we have some concern about, such as some of the vagueness. What does "housed" mean? Are these individuals coming into the legal custody of the Division of Child and Family Services (DCFS)? Does that make us financially responsible for the operations and control of their medical care? Is this the Department of Corrections (NDOC) coming in to run a wing at a DCFS facility? There is some vagueness in the bill that we are not quite sure of what the impact would be.

In addition, while it says the court may at the time of sentencing determine the individual is too dangerous to be at the juvenile facility, there is currently no provision that talks about if they are one of these youthful offenders from the adult system, and they become a danger while there, there is no mechanism to transfer that individual to the adult facility at that time. We would have to keep them until they are 18 no matter how poorly they may be behaving, unless they are convicted of a new crime that they commit while at our facility. Some other states that have a process similar to this, such as California, have a provision that allows the agency that houses them to determine where they go. In California, it is a little bit easier because it is the same agency that runs the juvenile facilities as well as the adult facilities, so you do not have the questions about legal custody and care of the individuals.

In order to execute how it is currently written, we would need a large increase in staff at Summit View to take those 15 to 20 additional youth. It would increase our population by about 50 percent. If we did not do that, then we would have greater and longer waits of time. As Mr. Martin mentioned, the youth are waiting to come to the facilities in the juvenile justice system.

Chairman Yeager:
You mentioned Summit View, and we heard about it today. I want to make sure I heard you correctly. It sounded like you said that if you were given the appropriate resources and staff, you would feel comfortable potentially housing the youth who are in Lovelock at Summit View, but it is a staffing and resources issue.

Ross Armstrong:
I am not familiar enough with the criminal and behavioral profiles of the individuals who are at Lovelock to say we would be able to program with them well. There are different incentives. The youth at Lovelock know they have time until they are legally permitted to go, whereas our youth are working to behave in a way so they can be released. The blending of that programming would be interesting. I know that there would be an increase in resources needed to do it.

Chairman Yeager:
How many beds do you have at Summit View?

Ross Armstrong:
We are currently budgeted to operate 48 beds. Physically, there are 96 beds at Summit View.

With the state having operated it for about a year, I do not think there are sufficient classrooms or mental health counseling rooms to actually operate at full capacity and be able to provide a quality service.

Chairman Yeager:
Did you say it was 46 or 48 that you are budgeted for?

Ross Armstrong:
We are budgeted for 48.

Chairman Yeager:
How many of those 48 beds are currently taken?

Ross Armstrong:
I believe we have 30 there right now.

Chairman Yeager:
Thirty that are taken?

Ross Armstrong:
Yes.

Chairman Yeager:
Are there any other questions for Mr. Armstrong? [There were none.] Is there anyone else who would like to testify neutral on the bill?

John Martin:
I heard mention of the cost per day at $140 per day. I wanted to make sure we told you what our cost per day is, which is closer to $300 per day to provide the services in our juvenile detention facility in Clark County.

Chairman Yeager:
Thank you for the clarification.

Assemblyman Ohrenschall:
I appreciate the Committee hearing this bill. Certainly, the Judiciary Committee is a policy committee, not a budget committee. I do believe there are ways this bill, if enacted, could work. There will be savings on the other end, in terms of where the children are currently housed. This is not the venue to debate that. Policywise, I do not think there is a lot of dispute, even in the opposition testimony, as to the benefits of trying to keep children housed with children, regardless of whether they are pre-adjudicated or post-adjudicated.

In response to one of the comments as to the pre-adjudicated children, in many cases the accusations are very serious. We have to remember these children, just like anyone accused of breaking the law, are innocent until proven guilty. They would have those same rights that

any other defendant or youth accused of committing a delinquent act would have. I hope the Committee will consider processing this.

Holly Welborn:
The concerns are very valid as to what this new structure will look like. Several states across the United States have successfully implemented this program. Some have had huge fiscal costs in implementing those programs, and others have not. They have been able to make it work by maybe limiting to whom it applies. Some of those states include Kentucky and West Virginia, where they have completely revamped and built new facilities to comply with JJDPA. There is Ohio, New Jersey, Georgia, New York, and Maryland. We can send you some information so you can see what those programs look like and how it has been successfully implemented.

Kristina Wildeveld:
I think with all of the comments, everyone is on the same page that this would, overall, be good for the youth in our state. I think all of these bills recognize the fact that these juveniles will be reintroduced into society at some point, and recognizing where to house them is an important issue. As Ms. Duffy pointed out, she does not have an issue with where they are housed. It is about our public safety that is her concern. As long as the facility is a safe and secure location, I think that juvenile would be the best place to house these people. I have had issues and seen juveniles who have been raped before they were separated from adults. They were raped in the adult facilities in CCDC.

As we sit here today, I have a 16-year-old who is in CCDC and housed with the juveniles. I had a conversation with him last week. He is trying to be gang-initiated in CCDC. I said, "You did not come in here a gang member; why are you being gang-initiated?" He said, "Because once you go to prison, you have to choose a side." I said, "No. You are not going to go to prison. You are not going to come into jail not being a gang member and then go to prison and become a gang member. That is not going to happen. You are not going to go to prison wearing a gang jacket." He said, "You have to choose a side. That is what they are all telling me." In juvenile, they are equipped to deal with this. The probation officers in juvenile talk to the kids about not becoming a gang member. The corrections officers in CCDC do not. So just an example like that where they equip these kids with the abilities to become better prepared to enter into a prison facility, to become better prepared to stand up to this kind of peer pressure, such as saying you have to be gang-involved when you are entering a prison system. Just simple things like that makes it worthwhile as a society for us to house these kids in a juvenile facility so when they come back out, they are not gang-involved and not worse for the wear than when they went in. It is a burden on the jail, and it is a burden on the prison system.

I think with talking to both of those two facilities, perhaps we can deal with some of the fiscal issues that have been talked about. Right now we have some of the people from juvenile going over to the adult jails and talking to the kids who are in the adult jails, so we are utilizing the people from the juvenile facility in the adult facility as it stands right now.

I think they are doing that on their own time and their own dime because they care about those kids over there. So why not bring those kids to them so they can serve them where they work?

With regard to the Ayden McKinnon case that you heard earlier, his case was in the system two weeks prior to the legislation passing, so he went direct file into the adult system. He never received the benefit of a certification hearing.

Assemblyman Ohrenschall:
I want to stress to the Committee that if A.B. 185 were signed into law by the Governor, it would not take away a judge's right to place a child in an adult facility. If they felt the child was appropriate for an adult facility, pre-adjudication or post-adjudication, they would still have that right. It gives the judges much more discretion, as we saw in my answer to Assemblyman Pickard's question as to where appropriate housing is for a child, whether it is a youth facility or an adult facility.

Certainly, there are costs to this bill. There is no intent on hurting any of the good programs that are in Clark County. There are costs to not enacting this bill and, unfortunately, those are costs we may see in future legislatures down the road. The epidemic of violent crime in Clark County is shocking and heartbreaking, especially as it applies to youth. This is the policy that I think will help prevent us seeing children back in the adult pipeline.

Chairman Yeager:
I will close the hearing on A.B. 185. Is there anyone who would like to give public comment? [There was no one.] Thank you for your patience today. I know we started a little late because of the weather. We will resume tomorrow morning at 8 o'clock with the Corrections, Parole, and Probation Committee. I believe we have one bill scheduled and a work session. This meeting is adjourned [at 11:04 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
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 copy of an article from oprah.com, taken from the link, presented by James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth, dated March 6, 2017, regarding Assembly Bill 216 and Daniel Kovarbasich. www.oprah.com/oprahshow/the-16-year-old-boy-who-killed-his-molestor#1xzz4wb1MRNq

Exhibit D is written testimony presented by James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth, dated March 6, 2017, regarding Assembly Bill 216 and Alexis K. Martin, taken from the link www.cleveland.com/akron/index.ssf/2015/03/girl_sentenced_to_life_in_pris.html.

Exhibit E is a copy of a news article from KPBS, dated March 3, 2017 available on www.kpbs.org/news/2014/aug/12/freedom-sara-kruzan-means-cleaninsing-reconnecting-1. This copy was submitted by James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth, regarding Assembly Bill 216.

Exhibit F is a proposed amendment to Assembly Bill 216 presented by John J. Piro, Deputy Public Defender, Clark County Public Defender's Office.

Exhibit G is a letter in support of Assembly Bill 216 to the Assembly Committee on Judiciary from the Nevada Attorneys for Criminal Justice dated March 3, 2017, presented by John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association.

Exhibit H is a document titled "Zero Tolerance: How States Comply With PREA's Youthful Inmate Standard" by the Campaign for Youth Justice, presented by Assemblyman James Ohrenschall.

Exhibit I is a letter dated February 23, 2017, from Sheila Lambert, Grant and Policy Administrator, Nevada Department of Corrections, to Assemblyman James Ohrenschall.

Exhibit J is a memorandum dated August 18, 2008, to State Agency Directors, Juvenile Justice Specialists, and State Advisory Group Chairs from J. Robert Flores, Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, regarding compliance with the separation requirement, presented by Holly Welborn, Policy Director, American Civil Liberties Union of Nevada.

Exhibit K is a document titled "Case Examples: Jurisdictions That Have Removed Youth under the Age of 18 from Adult Jails," by the Campaign for Youth Justice, presented by Holly Welborn, Policy Director, American Civil Liberties Union of Nevada.