MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
March 30, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:05 a.m. on Thursday, March 30, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblyman 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
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Edgar Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Devon Isbell, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Ivan Gonzalez, Private Citizen, Las Vegas, Nevada
Gail J. Anderson, Deputy Secretary for Southern Nevada, Office of the Secretary of State
Leo Murrieta, Founding Chair, Latino Leadership Council
Emma Swarzman, representing Progressive Leadership Alliance of Nevada
Susan L. Myers, Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
The Honorable James W. Hardesty, Justice, Supreme Court of Nevada
Kimberly M. Surratt, Attorney, representing Nevada Justice Association
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services
Susan Roske, Private Citizen, Las Vegas, Nevada
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
Kristina Wildeveld, Attorney, Las Vegas, Nevada; and representing Nevada Attorneys for Criminal Justice
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office
Lindsay Anderson, Director, Government Affairs, Washoe County School District
Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Clark County District Attorney's Office
Matthew Richardson, Secretary, Nevada Association of Public Safety Officers; and representing Juvenile Justice Probation Officers Association
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Mike Ramirez, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.; and representing Southern Nevada Conference of Police and Sheriffs
John "Jack" Martin, Director, Department of Juvenile Justice Services, Clark County
Scott J. Shick, Chief Juvenile Probation Officer, Juvenile Probation Department, Douglas County; and representing Nevada Association of Juvenile Justice Administrators
Ali Banister, Chief of Juvenile Services, Carson City Department of Juvenile Services

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada
Frank W. Cervantes, Director, Washoe County Department of Juvenile Services
Elizabeth B. Florez, Division Director, Washoe County Department of Juvenile Services
Ross E. Armstrong, Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services

Chairman Yeager:
[Roll was called and protocol was explained.] Good morning to everyone here in Carson City on what appears to be a rainy Carson City day. Good morning to everyone down in Las Vegas and to anyone watching on the Internet. We have three bills on the agenda today and we are going to take them slightly out of order. The order in which we are going to hear the bills is Assembly Bill 324, Assembly Bill 278, and finally Assembly Bill 341. At this time, I will formally open the hearing on Assembly Bill 324, which revises provisions relating to document preparation services.

Assembly Bill 324: Revises provisions relating to document preparation services. (BDR 19-1091)

Assemblyman Edgar Flores, Assembly District No. 28:
Good morning, Mr. Chairman and members of the Committee. I am Assemblyman Edgar Flores. I represent District No. 28 in northeast Las Vegas. I am here to present Assembly Bill 324. Before I get started, I want to tell my constituents that this bill is for them.

I would like to offer you a quick road map as to how I plan to proceed. First, I will identify the issues; there are two that I am specifically trying to address. Second, I would like to request that Ivan Gonzalez, who is down in Las Vegas, come up and provide personal testimony about those two issues. Third, I want to specifically address statutory language and how the language in A.B. 324 addresses those issues. Last, I will pass the presentation over to Ms. Gail Anderson, who works at the Office of the Secretary of State and has first-hand accounts with these issues. She can explain, through her lens, why this bill is necessary.

I want to revisit a conversation I started with this Committee concerning a different bill. It is a conversation about the unauthorized practice of law, specifically as it pertains to paralegals and tax preparation services. Here is the issue: the word "paralegal" does not have a definition in the state of Nevada. Paralegals have no governing board, no regulatory body; there is nothing that defines what a paralegal is. It is not in case law. I had the Legislative Counsel Bureau staff look into this issue and they could not find a definition. Nobody knows what a paralegal is. There is nothing stopping me or you—or anybody in this room—from calling themselves a paralegal. There are bodies that offer a sort of paralegal degree, but that does not stop any person on the street from calling themselves a paralegal.

Why is this a problem? The first problem is that paralegal has the word "legal" in it, and that creates a heightened belief that they have some type of authority or right to offer some legal advice in our community. In fact, there are a lot of businesses that call themselves "paralegal services"—paralegal this, paralegal that—and it is confusing. In turn, this creates a dynamic where people equate paralegals and document preparation services with lawyers, when in fact paralegals are really just preparation services. Paralegals do not necessarily work underneath an attorney, and this is an issue. The second issue we have is tax preparation services themselves. In other states, tax preparation services have governing boards or regulatory bodies that oversee everything they do. We do not have anything like this in the state of Nevada.

Why is that a problem? It is a problem for three reasons. Number one, in the state of Nevada we do not regulate contingency fees when it comes to tax preparation services. For example, if I was a tax preparation service, you could come to me and I could tell you to let me prepare a form for you. In the process, the more money I get for you, the more I would be paid. This is a problem because it creates an incentive for tax preparers to lie or bend the lines a little bit so that they can try to get the client some type of tax credit that the client does not deserve. Tax preparers pop up overnight, they disappear, and two or three years later, customers are audited and they are left holding the bag and paying a bill. That is an issue.

The second issue is that a lot of these businesses provide tax preparation services from December through April, but for the rest of the year they are just a front for document preparation services. They provide immigration, family, and bankruptcy help, and these document preparation services are not abiding by the rules that we have in statute.

There is a third issue, and it may be the most important. If a business is a tax preparation service, can customers complain to the Internal Revenue Service (IRS) if they do something wrong? The answer is "kind of." I say "kind of" because these businesses are what is called "enrolled agents" under the IRS. All the term "enrolled agent" means is that the person or business is minimally competent to fill out a form. Enrolled agents have gone through a few hours of training, and they have paid a fee. They have done a few things. But if a customer was to complain to the IRS that an enrolled agent did something wrong, all the IRS could do is revoke their enrolled status under the IRS. That is all the IRS could do. That is all the teeth we have over tax preparers. It is a problem because we do not even know if every tax preparer is registered as an enrolled agent; that data does not exist. Nobody walks into a tax preparer and asks if they are an enrolled agent under the IRS, so even if their status is revoked, it means absolutely nothing for the consumer.

Those are the issues I am trying to resolve with A.B. 324. I would now like to ask Ivan Gonzalez to come up and testify.

Chairman Yeager:
If it is okay with you, Assemblyman Flores, we will take testimony from the gentleman in Las Vegas and Ms. Anderson, and then we will open up for questions from the Committee.

Assemblyman Flores:
Fair enough.

Ivan Gonzalez, Private Citizen, Las Vegas, Nevada:
Good morning. My name is Ivan Gonzalez. I am a legal assistant, and I have been working with insurance offices for six or seven years. I currently work in a law firm. The reason I am here making my statement is because I want to make everything fair for the people here in Las Vegas.

When I was working in an insurance office in Las Vegas, my boss told my coworkers and me to take a quick tax servicing class. We started the course with a major tax service, but when they realized we were an insurance company, they discontinued our course. During the short time I was in the course, I discovered that we were being taught to simply fill in the blanks in the software program. I also learned that every location would have personnel who would later review the documents before submitting them to the IRS.

Then my boss decided to contact another tax preparation software company, and we went through that training, and this is what happened. After a few days, my boss got into contact with a company that had tax preparation software, and this software was really new to us. This company's main focus was the way the client had to sign their return. The most important part of the process we learned during our training was that the client would only have to sign once and the program would enter their signature in the remaining slots on the form. Also, if the person did not know how to write—because a lot of Hispanics in our area did not know how write—they could just sign with their fingerprints. It did not seem like a good idea so I brought my concerns to my boss's attention but we continued to learn the software. I am not going to tell you the name of the actual software but it is a local company.

This company attracted their clients by telling customers they would get the maximum returns, but the more money clients got in their returns the more money the company would make in hidden charges. This was done without the customers' knowledge. Only people who were trained to use the software would be able to see the actual charges. We were taught that the way to get the maximum return was to add expenses that the client had no knowledge of until the IRS audited them and the person became stranded.

I want to talk to the Committee about the refunds. This company offered a same-day refund, which was a refund with advance financing. They would give the client some money for their return up front, and then the company would charge the client interest fees.

My boss decided not to continue working with this company, but as I told you, this company grew from one location to multiple locations here in Nevada. They grew to about 20 locations at one point in time, but right now, I only count 15. If a person like me started

opening businesses and making money this way, you would question me; these people are just opening businesses like nothing, and it has really become ugly. They are making a lot of money off people, and I do not think this is fair.

As to the other things that insurance services companies and the Department of Motor Vehicles do, a huge cash flow is not being accounted for. For instance, I could charge you $20 for a paper, while somewhere else could charge you $100, and that just is not fair.

I would like to thank Assemblyman Flores for having me here and giving me the opportunity to share this with you. Thank you so much.

Chairman Yeager:
Thank you for your testimony, Mr. Gonzalez. Ms. Anderson, would you like to provide testimony?

Assemblyman Flores:
Rather than have her provide testimony, I will just get to the bill. She will not provide testimony, in the interest of time, but she will be available to answer questions.

Chairman Yeager:
That would be fine. Thank you.

Assemblyman Flores:
I would like to thank Mr. Gonzalez for his testimony. Perfect. I think he just hit it on the head. People are being trained not to provide a lot of detailed information as to what is happening with customers' tax returns. They are just looking for ways to fill the forms out as fast as possible, getting the customer the maximum amount of refund possible, even though they are not entitled to it. People are being trained to give customers an up-front payment for their tax refunds, and then they keep the rest. There are all kinds of things going on in this market. We want to fix that with A.B. 324.

I am working off a mock-up for an amendment to A.B. 324 (Exhibit C) that was uploaded onto the Nevada Electronic Legislative Information System (NELIS) yesterday. I want to make sure everybody is working off it.

Page 5, lines 42 through 45 of the mock-up say that if you want to call yourself a paralegal or a legal assistant, you must work under an attorney. That will clean up the confusion. If you are not working underneath the supervision of an attorney, then you need to call yourself a document preparation service, because that is what you are. The bill seeks to preempt some questions such as, What if somebody got a degree, went to a two-year institution, and became a paralegal? Why can they not call themselves a paralegal? I have an analogy for this. Say I have a law degree. That does not mean I can walk around calling myself a lawyer. I need to go through additional steps under the State Bar of Nevada before I can call myself a lawyer. It is the same thing with paralegals. They may have a degree that says they earned

x number of credits, but we want the Nevada Legislature to say that, on top of that, paralegals must now work under the supervision of an attorney. That is what A.B. 324 seeks to do.

Assembly Bill 324 does three things pertaining to tax preparation services. We want to grab tax preparation services and put them in the document preparation service statute. This will create a type of overview for the Secretary of State so that they can see what these businesses are doing. This means that tax preparation services will have to abide by all the rules of document preparation services, which means that they will have to register and pay an application fee. It is important to note that the bill requires a $50 application fee and a $25 renewal fee every year. In addition to that, tax preparation services will be required to have a bond. The bond provision is powerful and important because it will account for losses and damages incurred by consumers in the event that the business disappears and customers want their money back, even if it is years down the road. We want the bond to help protect the consumer.

The third and most important thing the bill does is it provides funding for education. We often talk about education here, and every time we talk about document preparation services, we always agree that we are not educating the community. This is because we just do not have the resources. The Office of the Secretary of State is overwhelmed and going in a thousand different directions, and the $75 fee we are talking about—the $50 original application fee and $25 renewal fee—is going to create a little over $10,000, which can only be used for education and enforcement of document preparation services. This bill creates something we can use to go after predatory businesses, and more importantly, we can also educate the community.

I want to close by saying that if we leave the system the way it is now, we leave a completely unregulated segment of the business world that we have never touched, and this segment is doing whatever it wants. This bill is really just baby steps. This bill brings these businesses under statute. We may need to do more in the future, but A.B. 324 is the first, and an important step as it brings tax preparation services under the document preparation service statute. With that, I am happy to answer any questions.

Assemblywoman Tolles:
I have a good friend who is an immigration attorney and she has shared the frustration, or the confusion, over notaries with me. I appreciate your addressing this issue. I have a question about section 2, subsection 3(a) where it mentions the application fee of $50, and also section 3, subsection 1(a) that mentions the $25 renewal fee. I am sure it is implied that it is annual. Is this specified in the bill and, if not, could we add it for clarification?

Gail J. Anderson, Deputy Secretary for Southern Nevada, Office of the Secretary of the State:
The application fee is for the original application the first time. It is a one-time fee that covers the review of the documents, completing a background check, and ensures everything else is in place. The $25 fee is an annual renewal fee. Section 3, subsection 1 of the original bill says that the registration is valid for one year after the date of issuance. That specifies

one year of time, and then the renewal is $25 after that one year. We are fine, however, with suggestions that add more clarity to the language.

Assemblywoman Tolles:
Thank you; I am sorry I missed that. Am I correct in assuming that the renewal is due one year after the application and not on the same date annually?

Gail Anderson:
The $50 original fee will be good for one year; it is a $50 application fee for the first year and then a renewal fee of $25.

Assemblyman Pickard:
Thank you, Assemblyman Flores, for bringing this bill forward. I agree that we have a significant issue with document preparation services giving legal advice. The first question I have concerns section 1, subsection 3. These are the exclusions. You added paragraph (o), where you identify a certified public accountant (CPA) as not falling under the purview of the statute. I assumed that we were going to require the same kind of supervision of tax preparation services by a CPA. I do not see that; was that part of the intent?

Gail Anderson:
Certified public accountants are intended to be exempt from the requirements of *Nevada Revised Statutes* (NRS) Chapter 240A. They are regulated by the Nevada State Board of Accountancy, as are the investment and financial advisors who are regulated under NRS Chapter 628A. Those advisors have a $1 million minimum bond required for them. This bill is intended to be very clear about who in the tax preparation business would be excluded from the provisions.

Assemblyman Pickard:
I understand that part, but my question was about whether we are expecting to have the tax preparers work under the supervision of an accountant, just as we require paralegals to work under the supervision of an attorney.

Assemblyman Flores:
In that scenario, they would be excluded. Certified public accountants have a whole host of individuals underneath them, and their entire business would be excluded because CPAs have a different regulatory body that supervises them.

Assemblyman Pickard:
If they are employees?

Assemblyman Flores:
If they are employees, exactly.

Assemblyman Pickard:
My other question is about the concept of putting tax preparers in this statute. As I understood it, NRS Chapter 240A was really intended to address document preparation services or paralegals that were ultimately providing a service to help people fill out forms. The statute tried to delineate that, and I think we are trying to clarify that, because many paralegals do cross that boundary. Tax preparation services are very different, though; these are accountant-type services as opposed to attorney-type services. Have we looked at how this bill is going to dovetail with current law? I believe NRS Chapter 240A addresses practice standards. Have we looked at making sure that we are not inadvertently including tax preparation services under requirements for the other types of services?

Assemblyman Flores:
I will concede that there is actually a lot of blurring of the lines. Many tax preparation services announce themselves and avail themselves out to the community as tax preparation services, but in fact, they are document preparation services. First, they use that label to disguise themselves so they can avoid being pulled into and having to abide by this statute. Second, there are many similarities between them because tax preparation services, unfortunately, do bend the lines a little bit and engage in providing legal advice. Tax preparation services are really supposed to ask clients questions and then fill out forms. A tax attorney can tell a client that they are going to go beyond form filing because he or she is an expert in this area. Tax attorneys can advise clients through a legal lens on the best way to maximize tax returns. Tax preparers are doing that as well. They are serving as tax attorneys, advising clients in a way that goes beyond just filling out forms, which is all that they are supposed to be doing. As a side note, when people go to tax preparers, they sign all of the forms themselves as if they are the only person who filled out the form, and nobody else is held accountable. Because of that meshing and because of the nearly identical problems we see in tax preparation and document preparation, we realized that they really should be regulated in the same way.

Assemblywoman Jauregui:
I have a suggestion. I am not sure if this is something that is possible, but when I was at Financial Guidance Center, a lot of community members who had used tax preparation services would bring us their original documents along with the notice they received from the IRS saying that they owed money. This is not an issue that only affects a minority group; it is an issue that affects an entire economic group. It affects the people who need the money the most and want their return right away, so they go to tax services who say they will get them the money the same day. One thing I noticed is the amount of money these services charge. Not only do they charge their flat document preparation fee, but then, in addition, if you want your money that same day, they take a huge percentage of the refund which ends up costing our constituents more money. When they get audited, our constituents have to pay that money back. Tax preparers work the numbers to maximize the refund. The more money they can refund to clients, the more money they keep in their office because they take a percentage. Is there any way for us to cap that? I would see this annually. I also had two visits from the U.S. Secret Service, the Federal Bureau of Investigation, and the Office of the Attorney General—they were all investigating one company because we had

seen so many of their customers come to our nonprofit for help. We should be protecting those community members who need their money the most. Is there any way for us to cap what tax preparers can charge?

Assemblyman Flores:
Thank you for asking that question. The answer is yes, we can, but the reason I did not include anything like that in A.B. 324 was because I wanted to bring these businesses under the document preparation statute, allow that to play out for two years, find out what kind of compliance we see, and then tackle the fees. We need to see what happens once they are brought into the statute and how much more expensive it is going to be for them to do business. Tax preparers will be paying $75 more to do business. Personally, I wanted to let the situation play out and then do an assessment as to what an ideal cap would be. That is the only reason I did not include it in the bill, but I do think the contingency fee incentivizes people to want to cheat their customers.

Gail Anderson:
I wanted to add something. In 2013, NRS Chapter 240A was very well written and included disclosure requirements and contractual requirements for document preparation services. Under NRS Chapter 240A, document preparation registrants are required to provide a contract that lays out very clearly what they are going to do and what they are going to charge, up front. There is strong disclosure language in NRS Chapter 240A, and it was very well done. By holding tax preparers accountable under this statute, we are at least requiring them to make disclosures to our constituents. Assembly Bill 324 does not include CPAs, attorneys, or certified financial planners.

Assemblywoman Jauregui:
I appreciate that, too, and I know tax preparers disclose that information. Unfortunately, their customers need the money so badly that, if they are getting $2000 back, they are willing to pay $500 to the preparation agency to get $1500 the same day.

Assemblywoman Cohen:
I want to ask you about section 4, subsection 4, and the requirement that the supervising attorney is licensed to practice in the state of Nevada. I just want to be sure: Are we excluding attorneys who are, for instance, able to practice in immigration court, that are not licensed in Nevada but are properly working in our state through federal court? Is that addressed in the bill?

Assemblyman Flores:
I think that is a mistake on my end. I was trying to capture the many disbarred attorneys who veil themselves as real attorneys and work with many of the document preparation service companies. We were trying to ensure that disbarred attorneys do not attempt to use paralegals to perform services because they used to be attorneys. I was trying to capture them, but I inadvertently left out the fact that there are many attorneys who are licensed in other states. We will amend that, and I thank you for bringing that up.

Assemblywoman Cohen:
I know there is also an exception for attorneys who do certain types of work through the Legal Aid Center of Southern Nevada; although I think they would be covered because they are licensed in Nevada. There may be other exceptions; I just do not know them off the top of my head.

Assemblyman Flores:
I will also add that lawyers in the nonprofit world are excluded from the statute as well.

Chairman Yeager:
At this time, I would like to open the hearing up to testimony in support of A.B. 324. If anyone would like to testify in support, please make your way to the tables in Las Vegas or here in Carson City.

Leo Murrieta, Founding Chair, Latino Leadership Council:
My name is Leo Murrieta. I am here as a member of the Latino Leadership Council, speaking here in support of A.B. 324. I am here specifically because I was once a victim of notario fraud myself.

I am an immigrant to this country (Exhibit D). I was born in Mexico and brought here as an infant with my family, as missionaries through the evangelical church. My parents worked really hard to provide for us and instilled in my siblings that we needed to actively participate to make this country, our country, a better place. In 2007, I took that lesson as a call to finally become a U.S. citizen and vote. I began my journey to become a citizen by seeking help from recommended services from members of our family's church, but what I did not know was that it would lead me down a path where I would encounter notario after notario that passed themselves off as attorneys, legal assistants, and experts in immigration. It was a mistake that would cost me several thousand dollars and many years of my life.

I am an educated person with mastery of the English language but I still trusted these referrals because, culturally, it was customary to trust people within the church. I fell victim to the abuse that can come from actors who prey on people who follow these customs as well. In Latin America, a notario is someone with varying degrees of legal and judicial prestige, depending on the nation in which you find yourself. In this country, however, we understand that a public notary or a document preparation service is simply someone who verifies your identity with a signature or offers you a stamp.

Nevada has made strides in codifying consumer protections like this in the past, and I urge your support for this legislation as it could have been the defense that I needed but did not receive. Thank you.

Emma Swarzman, representing Progressive Leadership Alliance of Nevada:
My name is Emma Swarzman and I am representing the Progressive Leadership Alliance of Nevada, also known as PLAN. We are in full support of A.B. 324 because it tightens the rules and regulations for document preparation service agencies and also increases the

accountability of such practices. People go to these document-preparing agencies because they are not comfortable filling out an application on their own. Furthermore, many are actually intimidated by all of the questions that are asked, which are, of course, required to be answered correctly. They worry that even an honest error on their part may cost them dearly. Because they often cannot afford to go to an attorney, these agencies have a, so-to-speak, "captive" audience, which can easily lead to the client being taken advantage of. These service practices are not supervised by a lawyer, so it can be misleading for the clients if the document preparers advertise or represent themselves as paralegals or legal assistants.

Being a part of PLAN, which provides naturalization services in our community, I have seen firsthand how common it is to make a mistake if you are unfamiliar with this important step. Filling out someone's official paperwork is serious business, and it should be treated as such. We appreciate Assemblyman Flores for bringing this bill forward, and thank you all for your time.

Susan L. Myers, Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada:

Thank you, Assemblyman Flores, for proposing this bill. My name is Susan Myers, and I am an attorney with the Legal Aid Center of Southern Nevada in the Consumer Rights Project. Specifically, I am the bankruptcy attorney at the Legal Aid Center. I am here to support the bill for the most part, especially the language prohibiting the use of the terms "paralegal" and "legal assistant," and clarifying that anyone using the term must be working under the supervision of a licensed attorney. Of course, Assemblyman Flores talked about the future amendment that will exempt specially admitted attorneys in Nevada.

This addresses a problem that I often see in my practice. We have an arrangement with the bankruptcy court where they refer clients to us who have tried to file pro se cases and have had problems. I believe almost two-thirds of the pro se debtors I saw last year who had problems with their bankruptcy cases had used document preparation services— particularly those that call themselves paralegals or legal assistants. It is more common for document preparers to call themselves paralegals. Even if the document preparer is registered and they provide the required disclosures, if they call themselves a paralegal, I often ask clients if they understand that paralegal cannot give legal advice. Clients tell me yes, but the person had "paralegal" in their name and that implied some special training, ability, or even an authorization by the court. Therefore, even if clients are handed the disclosures, the term "legal" in a business name weighs very heavily and influences the members of the public who use the service. They will often say they could not afford an attorney—and of course, we would provide the service free, but that is a different issue. I am very much in favor of that amendment.

I have one concern, however, regarding the inclusion of enrolled agents in the registration requirement. I am not an enrolled agent, and I am not really advocating on their behalf. That being said, my concern is that enrolled agents do have a regulatory scheme by the IRS, and there is a database where you can check if somebody is an enrolled agent. In addition to revoking enrolled agent status, the IRS can impose monetary sanctions. My concern is that

I would much rather see my clients go to an enrolled agent to have their taxes done than a regular tax preparer, and I do not want the public to be confused that enrolled agents have the same lack of any training or oversight as regular tax preparers. That is my concern, but overall, I am in favor of the bill and would like to thank Assemblyman Flores.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
While the American Civil Liberties Union typically does not testify in favor of any kind of increased penalties or the expansion of penalties, we find ourselves in the unique circumstance where we have to, for the interest of public policy, specifically because of the impact that these predatory practices may have on the ability of an individual to achieve or maintain lawful permanent residency in the United States. As a result of some of these predatory practices, some tax documents could be seen in an immigration court and deemed falsified, and that could unknowingly be used against the character of an individual who is fighting to maintain their residency or trying to achieve residency in the United States. Many individuals may not know that those improperly prepared tax documents or legal documents could actually be used against them. For these reasons, we support this legislation, and we would like to thank Assemblyman Flores for bringing it forward. Thank you.

Chairman Yeager:
Thank you, Ms. Welborn. Is there anyone else in support of A.B. 324, either in Las Vegas or here in Carson City? I do not see anyone. We will now go to testimony in opposition. Is there anyone opposed to A.B. 324? [There was no one.] Is there anyone who would like to testify in the neutral position on A.B. 324? [There was no one.] Assemblyman Flores, would you like to make concluding remarks?

Assemblyman Flores:
I just wanted to thank Gail Anderson. She has been instrumental in helping with this bill. I would also like to thank Mr. Gonzalez and everybody else who came up to testify in support of this bill. If you have any questions, please feel free to email me, and I will make sure I answer that as soon as possible. Thank you.

Chairman Yeager:
Thank you for your presentation. I will go ahead and close the hearing on A.B. 324, and we will now open the hearing on Assembly Bill 278, which revises provisions relating to the support of children. At this time, I invite our presenters to the table. Welcome back Justice Hardesty, Ms. Surratt, and Assemblyman Pickard, and thank you for your patience this morning.

Assembly Bill 278: Revises provisions relating to the support of children. (BDR 11-892)

Assemblyman Keith Pickard, Assembly District No. 22:
I represent Assembly District No. 22 in Henderson, and I am here to present A.B. 278 for your consideration. Nevada currently participates with the 49 other states and the District of Columbia in a system of child support enforcement efforts under Title IV-D of the Social Security Act. This federal program regulates and pays for the vast majority of the costs of

the efforts to obtain and enforce child support orders for the benefit of children throughout the country. Part of the responsibility placed upon the state is to regularly review and adjust child support rules and to remain consistent with best practices. Because Nevada has ensconced the rules surrounding child support in statute, it is particularly difficult to review and adjust these rules as needs arise.

On July 7, 2016, the Supreme Court of Nevada established and convened the Commission to Study Child Support Guideline Review and Reform (Exhibit E). Nevada Supreme Court Justice James Hardesty, who chaired the Commission, and Ms. Kimberly Surratt, an experienced family law attorney who also sat on the Commission, are here with me today to present A.B. 278.

Mr. Chairman, with your permission I would like to turn the presentation over to Justice Hardesty and Ms. Surratt, who will explain the impetus for the bill and walk the Committee through it, and then we will take whatever questions you have.

The Honorable James W. Hardesty, Justice, Supreme Court of Nevada:
Good morning, Mr. Chairman and members of the Committee. It is an honor to be here with you today to discuss the work of the Commission to Study Child Support Guideline Review and Reform. About a year ago, I was very surprised when a number of stakeholders in family law practice apprised me of the fact that Nevada had not undergone guideline review for its child support statutes in excess of 20 years. This issue places Nevada's federal funding for child support enforcement efforts in jeopardy. This Commission was formed at the request of that group of attorneys and with the consent of the Nevada Supreme Court. It represented every stakeholder in this area, including enforcement masters, family court judges, family court administrators, district attorneys, public defenders, and private practitioners.

I have supplied to you a document which is the report that was filed September 1, 2016 (Exhibit E). It is a short report, but attached to it is an outline of the proposals or recommendations that come to you from this Commission. Once again, this Commission unanimously recommended the amendments set forth in this report to the Legislature. The bill that has been prepared and the mock-up with one amendment that was distributed this morning address the recommendations that have been made, with one slight deviation (Exhibit F).

One recommendation is to accommodate the manner and process by which guidelines would be approved in the future through legislative commission review and approval of those actions taken by the administrator. After studying the approach taken in most of the states throughout the country, the recommendation was to follow Wisconsin law, which established a guideline committee that represents all stakeholders. The committee provides input every three or four years to review child support guidelines. This same process is recommended for the administrator in Nevada who will be responsible for enforcing these guidelines. Legislators who served on the Commission, including Assemblyman Elliot T. Anderson, Assemblyman Oscarson, Senator Harris, and Senator Atkinson, all joined in this approach.

Of course, as legislators, they were concerned that the Legislature ultimately review what regulations are going to be adopted by the administrator, so the process for placing this within *Nevada Revised Statutes* (NRS) Chapter 233B was included in the bill as part of this ultimate approval process. Timelines are important so they were added to the bill. The Committee is to be convened by September 1, 2017, and their work must be addressed by July 2018. This will bring Nevada into federal compliance. The existing statute that sets out provisions for child support would be repealed, and the guidelines would provide the basis district court judges would use to determine child support.

I would like to invite Ms. Surratt to comment on the bill and the Commission's work. We commend Assemblyman Pickard for his presentation to this, as well as a companion bill that is pending in the Senate, Senate Bill 34, which has some slightly different provisions in it. I am sure that some of this will get reconciled in the legislative process, but I would certainly urge the Assembly to consider and approve this particular measure with its amendment.

Chairman Yeager:
Thank you, Justice Hardesty.

Kimberly M. Surratt, Attorney, representing Nevada Justice Association:
I am an unpaid lobbyist with the Nevada Justice Association. I am also a sitting member on the Executive Council for the Family Law Section of the State Bar of Nevada and a family law practitioner in Reno, Nevada.

I wanted to give the Committee some background information to explain how we got here. Several child support bills were proposed during the last legislative session. It was obvious for at least the prior ten sessions that Nevada needed to make some serious changes to its child support system. The problem is that every time we tried to roll up our sleeves we found ourselves up against a wall with all the different requirements from the federal government—which policies and which procedures to take, and how to get to those changes. The promise out of last session was that this audit—this guideline review—had to take place. We knew it did, we knew it was part of the federal requirements, and we knew we had not done it. We knew it was the starting point for getting us to change and understanding where we needed to go.

We provided the Committee with a nearly 100-page guideline review that was completed right after the 78th Session (Exhibit G). The state followed through with its promise to conduct the review. They also followed through with the promise, out of last session, to include the private bar in the process and let us come along with them—to make sure the review happened and to ensure that the private bar did indeed participate. Jessica Anderson, of the Family Law Section, and I participated in that process. We thought it would be an easy process to present the results of our review during this session for changes, but we realized it was much more complicated than that. The review pointed out many errors and problems within our child support system that needed to be modernized and changed, but each problem came with about ten different roads you could take in order to reach a solution.

I also provided the Committee with some reports that the federal government just released—their final rule on flexibility, efficiency, and modernization of child support enforcement programs (Exhibit H). There is no way on earth I expect this Committee to read any of that; I just want you to see how complex it is to get us and keep us in compliance.

We have had problems with deadlines, and I gave you the chart of deadlines provided by the federal government (Exhibit I). We cannot keep up with the federal guidelines if we have to address them every two years and then wait to actually implement the changes. Our federal funding is dependent on our keeping up with these guideline requirements, and our children in Nevada, our attorneys in Nevada, and our district court judges in Nevada would love to see some actual changes and see us keep up with our needs for Nevada.

This bill is an exciting proposal for us because we may actually be able to get to where we need to be. Whoever is put on the committee we are asking for in this bill has a whole lot of work ahead to figure out what path we need to take. I have told everybody who has expressed interest to be ready to roll up their sleeves. It is time to get some work done on child support for Nevada and for our children.

Chairman Yeager:
Thank you for your testimony. Assemblyman Anderson, did you want to provide testimony before we take questions?

Assemblyman Elliot T. Anderson, Assembly District No. 15:
I actively participated with this Commission during the interim and, as both Ms. Surratt and Justice Hardesty discussed, I think it is very important concerning federal law. I think everyone should think about how this bill can help increase efficiency in our legislative sessions. Assembly Bill 278 takes child support guideline review and reform out of the political process and gives it to experts who work in this area. The bill still preserves the Legislature's ability to review regulations, however, by including Committee members as a part of the review panel and by requiring that regulations have to be approved through the Nevada Administrative Procedure Act in *Nevada Revised Statutes* (NRS) Chapter 233B. That would allow the Legislative Commission the oversight to review regulations and to ensure the Committee does not go too far afield from what the Legislature values and thinks is appropriate. Of course, the Legislative Commission is a body that has equal representation on a bipartisan and bicameral basis, and based upon the formula for those seats, it is likely to stay that way—even with wide swings in representation at the Legislature. I really think A.B. 278 will have a positive effect on our ability to comply with federal laws as well as our ability to maximize our efficiency during the legislative session. With that, Mr. Chairman, I will turn it back over to this panel to answer any questions.

Chairman Yeager:
Thank you for your testimony, Assemblyman Anderson. I have a question from Assemblyman Wheeler.

Assemblyman Wheeler:
I was just about to instant message you and tell you that I figured it out all by myself. I was wondering if this was going to affect a bill that we passed in the 78th Session about disability income [Assembly Bill 140 of the 78th Session], but that was actually on alimony and not child support.

Assemblywoman Cohen:
I am just going to make a brief statement thanking the Commission, and thanking you for the presentation. As a practitioner, I know this is something that needs a really deep dive and it is going to be so beneficial for our families to have this looked at so deeply and thoroughly. I appreciate it.

Chairman Yeager:
Are there any other questions from Committee members? I do not see any. Assemblyman Pickard do you have a question for the panel?

Assemblyman Pickard:
No, I do not have a question but I do have a comment. One of the things that has not been mentioned but is critically important is that if we do not comply with federal requirements, we run the risk of losing our federal funding. Federal funding pays for the vast majority of the state's effort to obtain and enforce child support arrangements. As a practitioner, it is a scary proposition to jeopardize that. This is an important bill that will help us achieve and maintain compliance over the long term. Thank you.

Kimberly Surratt:
I also wanted to add that we worked really hard ensuring all stakeholders were included as members in this Commission and for ensuring that, for once, not just Washoe and Clark Counties, but the rural counties were represented as well. Being from Winnemucca, it was really important to me to include input from different economic areas and different counties, since each community deals with child support a little differently.

Chairman Yeager:
Thank you for your presentation and your hard work on the bill. At this time, we will open the hearing up to testimony in support of A.B. 278. If anyone would like to testify in support, please make your way to the table. It does not look like we have anyone in Las Vegas approaching the table, but we do have someone here in Carson City.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
I am here on behalf of both the Nevada District Attorneys Association and the Clark County District Attorney's Office. I am here for the director of our family support division, Jeffrey Witthun. He sends his regrets for not being able to come here this morning. He was a member of the Commission and he wanted to note our strong support for the bill. Thank you.

Chairman Yeager:
Thank you, Mr. Jones. Is there anyone else in support of A.B. 278? [There was no one.] Let us take opposition testimony. Would anyone like to testify in opposition to A.B. 278? [There was no one.] Is there anyone who would like to testify as neutral on the bill? We do not have anyone in Las Vegas but we do have some people here in Carson City.

Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services:
I am the deputy administrator in the Division of Welfare and Supportive Services with responsibility over the child support program. With me today are Jenelle Gimlin, our program chief in the child support area, and David Castagnola, who is our program specialist. We just wanted to note that our agency is currently exempt from the Nevada Administrative Procedures Act.

We did have to put a fiscal note on the bill to cover the costs associated with potential travel to hearings, conducting workshops, printing and postage, things that we are not currently doing, and of course the fees that are associated with the Legislative Counsel Bureau review in this process. The agency will be able to cover those costs through the child support program. Additionally, recent federal regulations indicate we do have to take these measures to stay in compliance with the federal law and continue our funding.

Chairman Yeager:
Are there any questions from the Committee? I do not see any. Thank you for your testimony this morning. Is there anyone else in the neutral position on A.B. 278? [There was no one.] I will now invite our presenters back up to the table for any concluding remarks.

Assemblyman Pickard:
I appreciate the indulgence of the Committee for hearing this important bill, and I simply urge your support in passage. Thank you.

[A document explaining proposed amendments to A.B. 278 was submitted but not discussed (Exhibit J).]

Chairman Yeager:
Thank you for your presentation this morning. We will go ahead and close the hearing on A.B. 278. That will bring us to our third and final bill on the agenda today. I will now formally open the hearing on Assembly Bill 341, which revises provisions governing juvenile justice. We have our own Vice Chair Ohrenschall here to present the bill.

Assembly Bill 341: Revises provisions governing juvenile justice. (BDR 5-964)

Assemblyman James Ohrenschall, Assembly District No. 12:
I represent Assembly District No. 12, which includes parts of Henderson and unincorporated Clark County, and I would like to thank the Committee for hearing Assembly Bill 341. Ms. Susan Roske, who is down in Las Vegas, will be copresenting with me. She has been representing juveniles in delinquency proceedings for over 30 years. Ms. Roske just retired as the Chief Deputy Public Defender at the Juvenile Division of the Clark County Public Defender's Office. Prior to that, she was a social worker with Clark County and worked to help children. She is probably one of our state's foremost experts on juveniles and delinquency law.

We are currently in the year 2017. This is significant because it marks the fiftieth anniversary of a landmark U.S. Supreme Court decision, *In re Gault*, 387 U.S. 1 (1967). Back in the 1960s, a young man named Gerald Gault was arrested and prosecuted in a delinquency proceeding because he was a juvenile, but he was afforded none of the rights that we expect an adult criminal defendant to get. That case of young Gerald Gault went all the way up to the U.S. Supreme Court, and in an 8 to 1 decision, the United States Supreme Court ruled that a juvenile—who potentially could face loss of liberty through incarceration—deserves the same due process rights as an adult defendant: the same rights of notice, the same privileges against self-incrimination, and the same right to have an attorney present.

Assembly Bill 341 really looks at how these rights are working in Nevada. It is coincidental but still very significant that this is the fiftieth anniversary of the landmark decision that said that children are not less than adults when they are facing delinquency charges, which are what we would call criminal charges in the adult system.

Many of us are familiar with Miranda warnings. We have seen them on television shows: you have the right to remain silent, you have the right to an attorney, anything you say can be held against you. Juveniles are given a little bit of a different Miranda warning. They are the same rights given to an adult but they are also asked if they want to have a parent present. In the 50 years since *In re Gault,* a lot has happened in terms of brain science. We have heard quite a bit of testimony in this Committee on bills I have presented, as well as other bills, about how we now realize that a juvenile's brain—the frontal cortex—and decision-making abilities really do not develop until the age of 25. In my opinion, Mr. Chairman, the juvenile Miranda rights are not understood by many of the juveniles, and it is a right that they are oftentimes really not able to exercise to the fullest extent.

Assembly Bill 341 seeks to recognize the recent developments in brain science, and it follows laws that have been passed in some other states. There is, in fact, an article up on the Nevada Electronic Legislative Information System (NELIS) that references an Illinois and a Connecticut law similar to A.B. 341 (Exhibit K), in terms of trying to make sure that children who could lose their liberty understand Miranda rights and have a court-appointed attorney present.

At this time, I would like to turn the presentation over to Ms. Roske in Las Vegas, and I am happy to answer any questions you and the Committee may have.

Chairman Yeager:
Thank you, Vice Chairman Ohrenschall. Ms. Roske, welcome to the Assembly Committee on Judiciary. It is good to see you again.

Susan Roske, Private Citizen, Las Vegas, Nevada:
I wanted to take a few minutes to talk about the facts of the *Gault* case mentioned by Assemblyman Ohrenschall. Jerry Gault was 15 years old in June of 1964. His neighbor, Mrs. Cook, called the police to say that she had received a prank phone call, which she also described as lewd, and she believed Jerry was involved. The police went over to Jerry's friend Ronald Lewis's house, arrested Ronald Lewis and Jerry Gault, and took them to juvenile hall. No notice was given to their parents.

Jerry's parents were at work that day. When they got home and Jerry was not home, Mrs. Gault sent his older brother around the neighborhood to look for him. His brother went to Ronald's house, and Ronald's family said they took him to juvenile hall. Mrs. Gault went to juvenile hall and confirmed that Jerry was indeed locked up in the juvenile facility, and she was told to come back the next day for court. Jerry remained incarcerated.

The next day Jerry's probation officer filed a petition. That petition was never given to Jerry or his mother. The probation officer told the judge what Mrs. Cook told the police. The judge asked Jerry some questions. There was some conflicting testimony later as to whether there were admissions or not. Jerry and his mother said that Jerry denied making any phone calls. The judge recalled that perhaps Jerry made an admission of some kind. There was no court transcript.

The judge sent Jerry's mother home. Jerry remained at juvenile hall for a few days and was later sent home for some unexplained reason. They returned to court a month later, and the judge said he had thought about it, and because Jerry had been in trouble before, he was going to commit him to a juvenile institution for the remainder of his minority, which was six years.

These facts are rather shocking, but this was the state of juvenile court back in the 1960s. On May 15, 1967, the U.S. Supreme Court held, "Under our Constitution, the condition of being a boy does not justify a kangaroo court." In that decision, the court ruled that procedural due process rights apply to children in delinquency court. Thus, they deserve to have notice of what they are charged with, the right to counsel, the right to confront the witnesses against them, and the privilege against self-incrimination. In less than 43 days, we are going to be celebrating the fiftieth anniversary of that landmark decision, but unfortunately, the promise of *Gault* is still not fulfilled in our country. There are children all over this country that appear in juvenile court without counsel. In order to express this concern and to promote justice for all children, there are events all over the country this year celebrating the fiftieth anniversary of the *Gault* decision: symposiums, trainings,

know-your-rights campaigns for students, and a gala in Washington, D.C., for this very purpose. In Nevada, we have A.B. 341.

I would like to take you through the bill. Section 1 authorizes attorneys in juvenile proceedings to consult with and seek the appointment of professionals to assist in representation. This is significant because approximately eight or ten years ago, the Nevada Supreme Court issued performance standards for attorneys representing indigents in the criminal justice and juvenile justice systems. In its performance standards set forth in ADKT (Administrative Docket) No. 411, the Nevada Supreme Court noted that juvenile court representation or delinquency defense representation is a specialty. It is a specialty that requires that practitioners not only understand the rules of criminal defense and procedure, but also have a knowledge about children, such as understanding adolescent and child development; understanding language and communication barriers of children who are still developing; and understanding brain science and how developing brains can be impacted by abuse, neglect, and learning disabilities. All these factors not only play into the *mens rea* of the crime that was alleged to have been committed, but impact disposition and mitigation as well. We feel that it is important that there exist in the statutes an authorization to allow attorneys to seek the appointment of experts to help with not only their understanding of these factors in their representation of children, but also allowing experts to help educate the court.

Section 2 requires an attorney to be present at any interrogation of a child.

Assemblyman Ohrenschall:
There is a mock-up that should be on NELIS (Exhibit L), and hard copies were delivered to the Committee. Ms. Roske and I are working off the proposed, amended mock-up to A.B. 341.

Susan Roske:
The intent of A.B. 341 was never to limit the probation departments' ability to work with their clients. The intent was to limit interrogations of children, interrogations used for the finding of guilt and the adjudicatory phase of the investigation. As Assemblyman Ohrenschall stated earlier, children have a hard time understanding their rights. They do not even know what having a right means. They do not know what "waiver" means. Waiving has a completely different meaning to children, so when a police officer asks a child if they want to waive their rights they just say yes, because they are trying to pretend that they know what is going on. I have asked many 15- or 16-year-old children if they know what the *Constitution* is, and they do not. These children are waiving valuable rights, not understanding what they are doing, not understanding what a right is, not understanding what a waiver is but understanding that they are being talked to by somebody in authority. They have been taught to respect adults, respect people in authority, respect the police, and answer questions that are directed to them. Many times, I have asked kids why they talked to the police if the police officer told them they had the right to remain silent, and their response is that the police were asking them questions. They really do not fully understand that our *Constitution*, which we have all sworn to protect, guarantees children the right to

remain silent. They cannot fully appreciate this. They do not have the wherewithal, they do not have the life experience, and they need the learned hand of counsel to help protect these valuable rights. This bill asks that any interrogation of a child be conducted in the presence of an attorney to help protect those rights.

Section 3 presumes children are indigent for the purposes of appointing counsel. We ask that this be in the bill to ensure that children are given counsel regardless of their parents' ability to pay, and that any assessment of cost bears on the parent and not the child. We think it is important that all children have counsel.

Finally, section 4 is a legislative declaration and is so extremely important. As I said earlier, juvenile court representation is a specialty. This not only acknowledges *Gault's* findings, which guarantee that the right to counsel and the privilege against self-incrimination apply to children in delinquency actions, but it also urges the Nevada Supreme Court to provide for additional rules that would add minimum requirements for attorneys representing children in juvenile actions. Similar to the rule the Supreme Court provided to defense attorneys who take on death penalty cases, we are asking for the Legislature to acknowledge *Gault*, acknowledge the importance of these rights, and ask the Nevada Supreme Court to draft similar rules for attorneys practicing juvenile delinquency defense. We feel it is very appropriate to ensure that we have skilled attorneys with a broad base of knowledge about children accepting cases in juvenile court. That is the end of my comments, and I thank you for your attention.

Chairman Yeager:
Thank you, Ms. Roske, for your testimony. Assemblyman Ohrenschall, did you have any other remarks or do you want us to open up for questions?

Assemblyman Ohrenschall:
I am happy to take any questions. I think Ms. Roske put it very well.

Assemblyman Watkins:
When I was reading over this bill last night, I was caught a bit off guard by the waiver language and by the fact that we currently allow kids to waive any rights, because in the civil context, we do not allow children under the age of 18 to enter into any kind of contract. We believe that children do not have the requisite mental capabilities to have a meeting of the minds to form a contract, yet we are currently allowing them—if this bill does not pass—to waive rights. Children cannot enter into a cell phone contract and be held to the standards of $100, but they can waive their rights and freedoms in juvenile court. Am I reading that correctly? If this bill does not pass, then children absolutely can waive their rights with no counsel.

Susan Roske:
I would be happy to respond, and I could not agree with you more. Yes, every day children are waiving their rights. They are waiving their right to remain silent with police officers and probation officers, and making statements that may incriminate them. I have seen cases and

I have read transcripts where children have been lied to by police officers in order to induce a confession. I have seen cases where children have adamantly denied their guilt. For example, I read one transcript where a child denied his guilt throughout the interrogation, until they brought his mother in. They left the mother alone with the child for a few minutes and then the officers came back, and the child made an admission. That was not reflected in the transcript, but when we saw the videotape of the transcript—and this was in a court proceeding when the video finally came out—the conversation between the mother and the child was recorded. The mother said, "Just say you did it so we can get out of here," and then the child confessed, everybody was satisfied, and charges were brought.

Children's will is overborne many times. They are lied to sometimes. I have seen interrogations where police have told children that they have evidence or statements against them that they truly do not have in order to get a confession. This is very disturbing. I hope that these types of practices do not happen very much anymore, but I am afraid that they still might. We need to stop this. We need to stop tricking children into confessing, and I agree with you, these children are just too immature to waive these valuable rights.

Assemblywoman Cohen:
Can you delve a little deeper into section 1 and give me some idea about what an attorney would be looking for when asking for those appointments, as far as an educator?

Assemblyman Ohrenschall:
I am going to take a stab at answering that, and then perhaps Ms. Roske can chime in if there is anything I missed. There are many cases where a child is in delinquency proceedings and the attorney may feel the child might need the help of a social worker. Maybe the child has substance abuse issues that have never been diagnosed, or mental health issues, and they are trying to get services to that child. As far as educators, I very often think about educational surrogates. Many of the children who end up in delinquency court do not have very good records of going to school, either because of their own decision or because of things that have happened in their family—a lack of stability, homelessness—and very often the court will look for an educational surrogate to try to help address some of those issues. Maybe the child needs an individualized education program (IEP) and did not get one. That might help the child succeed, whereas up until now they have just hated school and said they do not want to go because they do not understand anything, and they feel like they are just wasting their time. Those are things in delinquency court that the child's attorney can do to try to connect the child with services that will help the child, regardless of the process of the case—whether it is going to go to a trial called a contested hearing, or whether it will be negotiated or be dismissed.

Susan Roske:
I agree with Assemblyman Ohrenschall. There are many times that children in delinquency court have an IEP. They have a disability of some kind, and understanding that disability through working with experts may help the court understand whether the actions that brought the delinquency charges are a manifestation of that disability. That is very important, and it may go to their *mens rea*, or their intent to commit any offense.

Furthermore, we are finding that many children have language disabilities. Their ability to communicate is hampered and it is important to get experts who can help the practitioner understand the child, to dig deep so they can understand whether the child is communicating appropriately, whether the child truly understands what is being told to him, and what has been told to him. These may bear on a defense as well as mitigation for the disposition or sentencing phase of the case.

Assemblywoman Cohen:
Just to make sure I understand, can it be utilized for the case and for services for the child outside of the case?

Susan Roske:
That is correct.

Assemblyman Pickard:
The majority of defense attorneys that represent these juveniles are from the public defender's office. These are not criminal actions; they are juvenile actions and the proceedings are much more oriented towards rehabilitation and getting the children back on track than an ordinary criminal, adversarial procedure. Within that context and as I understand it, the public defender's office represents most of these juvenile participants. They are not called litigants.

Assemblyman Ohrenschall:
Assemblyman Pickard, the term of art is "subject minor." The children who are accused of committing an act of delinquency are called subject minors.

Assemblyman Pickard:
If I understand this correctly, the subject minor is now going to be required to be represented by an attorney in that initial investigation phase. Under this bill, are we requiring that they have to seek private counsel for that interview, or would the public defender be available to step in, in those cases?

Assemblyman Ohrenschall:
Mr. Chairman, I just want to clarify one thing: the amended mock-up of the bill deletes the word "interview" (Exhibit L). Juvenile probation officers brought a few concerns to me. They were concerned about requiring an attorney be present or having to electronically record interviews if the child is in a juvenile detention center and the interview is a routine discussion of factors that do not have to do with an interrogation or the investigation of the accusation. The amended language deletes the word "interview," and only interrogation is used. There is an exception provided for juvenile probation officers and youth parole officers in youth correctional facilities or juvenile correctional facilities, post-adjudication.

As to the latter part of your question about whether there would be a list of available attorneys, I believe that would be up to the courts, but I will turn that over to Ms. Roske. Perhaps she can provide more detail.

Susan Roske:
I think you answered that quite well. I cannot speak for the public defender's office as I no longer work there, but I would imagine that the public defender's office would be consulted to provide any representations required at the early stages if the family has not already retained counsel.

Assemblyman Pickard:
As I understand it then, is the public defender's office involved at the initial investigatory stage? I imagine that the public defender's office is not going to learn about this until right before the first hearing where counsel is appointed. If the investigation precedes that point because charges have not been filed, how do we get attorneys to these children before the charges have been filed?

Assemblyman Ohrenschall:
Assuming A.B. 341—or a portion of it—becomes law, I think it would be up to the courts to decide whether they wanted to reach out to the public defender's office, or if they wanted to establish a rotation of private conflict attorneys to try to make sure that no conflict arose if there are codefendants involved in the accusations. I may be wrong, but that is my opinion.

Susan Roske:
I would like to point out that section 3, subsection 3(a) says that a child may waive the right to be represented by an attorney if "A petition is not filed and the child is placed under informal supervision pursuant to NRS 62C.200." This provision addresses the very informal process Assemblyman Pickard may be alluding to. That is the intake process. Here in Clark County—I assume it is very similar in Washoe County and the rural districts—when children are first brought into the system, they see a probation officer before they ever go to court. That probation officer has the discretion in many cases—not usually with felonies, but with misdemeanors and sometimes gross misdemeanors—to divert the child from the juvenile justice process without referring the case to the district attorney's office for formal charges. That is laid out in NRS 62C.200, which allows the child to go forward with informal proceedings or diversion without the need to have an attorney appointed.

If however, there is a planned interrogation of the child, then the statute requires that an attorney be present to protect that child's rights. I would, therefore, say that if an interrogation regarding whether a child committed an offense or not is going to take place, either by a police officer or probation officer, at that point the officer should stop questioning until an attorney is brought to assist the child. This does not stop officers from proceeding on diversion if that is what the child wishes to do. It just does not allow an interrogation to take place regarding the offense itself.

Assemblyman Pickard:
I have one other question. My understanding is that, if a child is speaking to police, parents are currently allowed to be present. Can you help me understand if the parents are required or just allowed?

Susan Roske:
Children are usually advised that they have a right to have a parent present when they receive the Miranda warning. It is not required under the law, but there are no provisions to suppress a confession if Miranda is not done. Most children are advised that they have a right to have a parent present.

As practitioners in juvenile court, we find that having parents present is not really helpful. Many times parents have a conflict or could be the victim themselves of the offense for which the interrogation is about to take place. The parent could be very angry at the child, presuming the child is guilty, or very angry about the whole situation—like that instance I mentioned earlier where the parent told the child to confess so they could leave. Parents have conflicting motives. Many times parents do not understand the system as well and do not understand rights. Having a parent present really is not the same as protecting one's privilege against self-incrimination.

Assemblywoman Miller:
I have been thinking about this, and I agree with you on that. The one thing that I am confident in with most parents is that they will at least know to contact an attorney. I believe that parents will know to do that. I wanted to speak to what Assemblywoman Cohen said when she asked why educators are included.

As an educator, I can see how easy it is to manipulate children. Children naturally want to get out of trouble so they will just start talking, believing that parts of the story are helping them and not realizing how things can be twisted against them. Educators are generally advocates for children. We see the children on a daily basis. We see their strengths, we see their weaknesses, we see their challenges, their abilities, their disabilities—diagnosed things and sometimes undiagnosed things. We see their behavior. We also can often be someone who the children trust and that they have a relationship with. In addition to their parents, oftentimes educators are that next-closest adult to the children. I think that is a very sensible person to include to advocate and be alongside the children as well.

It troubles me that the same rights that are given to adults are not extended to children, and that there is no recourse if a child does not realize they are relinquishing their rights. Does a child really understand what waiving those rights are? I know I talk to children about it all the time, but I still do not believe that children have that capacity, and I believe it is our responsibility to protect the children as much as we can and ensure that their rights are not violated.

Assemblyman Ohrenschall:
I just wanted to make a comment on Assemblywoman Miller's comment. I have represented children in delinquency proceedings where, unfortunately, the parent does not show up for a hearing, but instead a coach or a teacher from their high school who has become very close to them shows up and wants to vouch for what a good child this is and why they deserve another chance. That is where I think section 1 might help, especially by helping private counsel try to connect with social workers, educational surrogates, or other people who might help the child.

Assemblyman Wheeler:
Assemblyman Pickard started this conversation, but I would like to follow up on it. I have been on the other side of the interview table and there are instances where an officer may be talking to a child for a witness statement. That would obviously be considered an interview, not an interrogation. My question is, who draws that line? For instance, when talking to a child or a subject minor for a witness statement, what happens when the child crosses a line and gives the officer reason to move on and to question if the child really did this? At that point, is the police officer supposed to just throw his hands up in the air and walk out, or is he supposed to actually get the confession? Does it turn into an interrogation at that point? Who draws that line? Is it the officer who is going to have to draw that line?

Susan Roske:
I think in that case, yes, once the interview becomes an interrogation, I think that officer needs to draw the line and say that the child needs the benefit of counsel before they proceed any further. I believe that would be the case.

Assemblyman Wheeler:
Are officers trained to say that they do not want a confession at that time so that they can go get an attorney? Are the officers trained to draw that line for themselves, or is that something that really is more of an attorney-client type training?

Susan Roske:
I cannot answer that question, but I can say that I think police officers know the difference between an interview and an interrogation, and once the child becomes a suspect and is no longer free to leave, it becomes an in-custody interrogation. We have asked police officers to weigh the age of a child to determine whether a child can perceive he is free to leave in a recent U.S. Supreme Court case, *J.D.B. v. North Carolina*, 564 U.S. 261 (2011). I do not think it is too much to have an officer acknowledge when his interview becomes an interrogation, or when the focus of his questioning becomes that this child is now a suspect. I think police officers can make that distinction, and if they were not trained to do so, I do not think it would be difficult to train them.

Chairman Yeager:
Assemblyman Wheeler, we will likely have some other testifiers who might be able to answer that question in a little more depth as well.

Assemblyman Elliot T. Anderson:
I wanted to delve further into the educator issue and explore exactly what they would be doing, because we have the Family Educational Rights and Privacy Act (of 1974), or FERPA. Based upon your vision, have you contemplated what the educator would be doing in the courtroom, in light of FERPA considerations? If I understand this correctly, I think that these educator "experts" would not be commenting so much on a child's individual education or coming from the school district with specific information about the child's education. Have you contemplated any of those issues regarding appointing an educator as a child's representative? I ask that because there are pretty strong federal rules concerning education privacy.

Assemblyman Ohrenschall:
Very often when I have seen the court appoint an educational surrogate, the parents are asked to sign a waiver—whether it is Health Insurance Portability and Accountability Act of 1996 (HIPAA) or FERPA. I believe that the same process would happen with educational surrogates if this bill passed into law. That is my impression of how this would work, but I will defer to Ms. Roske, who may be able to shed more light on the subject.

Susan Roske:
I agree with Assemblyman Ohrenschall. Any issues with FERPA could be waived by the family, because we are only talking about the accused child who is on trial, in that particular case. I think for the most part these surrogates are not going to be talking about what happened in school or what is going on in school, but rather about what they have observed of the child, his present ability to understand, any educational barriers that are impacting his ability to understand, or educational plans that could benefit him in the future.

Assemblyman Elliot T. Anderson:
Great. Thank you.

Assemblyman Ohrenschall:
One thing I want to point out to Assemblyman Anderson and the rest of the Committee is that if a parent is not available or does not come to court, the court can presumably appoint a guardian *ad litem* who can act in the capacity of a parent or help sign those waivers.

Assemblyman Hansen:
Honestly, I have sat on this Committee for four terms, and never once have I heard a complaint about the Nevada juvenile justice system not complying with a U.S. Supreme Court decision that is now half a century old. I get the feeling that this bill is a solution trying to find a problem that does not exist. I am thinking of Brigid Duffy, Mr. Jones, Mr. Cervantes—these people have been here consistently—and all the time I have been here, never once have I heard a parent say that these people have abused their children. In fact, I always get the impression that our juvenile justice practitioners bend over backwards to try to help these children out. The U.S. Supreme Court ruled on the *Gault* case in 1964; is there even a single case in Nevada where our people have gone in and abused a child into a false confession?

Assemblyman Ohrenschall:
I would like to state to the former chairman of the Assembly Committee on Judiciary that no one is saying that any police officers or law enforcement officers are abusing any children. I think the argument being made here today is that the same juveniles who might lose their liberty are not understanding the very important rights the United States Supreme Court said, 50 years ago, apply to juveniles.

Assemblyman Hansen and I have served together on this Committee for the last four sessions. Brain science has developed, and we have gotten a lot more information in the last few years. Information has been presented that was not available when I first started serving on this Committee, Mr. Chairman. I think there is a lot more cognizance that children do not understand their rights. Just as most of us would not want our 16-year-old going out and signing a contract to buy a car, most of us would be very worried about waiving these very significant rights that, in some cases, could lead to our child being sent to a youth correctional facility or even being certified into the adult justice system. No one is saying that anyone is abusing our children in Nevada. The argument in favor of A.B. 341 is that our children do not understand their precious constitutional rights and that a change in our Nevada statute—such as has happened in Illinois, Connecticut and Montana—is appropriate.

Assemblyman Hansen:
Nobody wants to deny anybody their constitutional rights, but the reality with children is that we have a million things that we force them to do. We force children to go to school until they are 16 and do other similar things through the legal system. Does this bill apply to school police as well? Would this apply to a peace officer in a school who comes up and says, "Hey Hansen, you are cutting class," and then finds out that I have something in my car? Would this apply within the police operations within the Washoe County School District, for example?

Assemblyman Ohrenschall:
I am going to take a stab at your question, and then Ms. Roske can chime in if I miss anything. Truancy is not routinely charged as a delinquency proceeding anymore, so I do not believe that A.B. 341, if passed, would apply to a school police officer concerned that young Mr. Hansen might be cutting school. However, if young Mr. Hansen might have brought a knife to school or a bag of marijuana, it would be different.

Assemblyman Hansen:
I used to have a shotgun in my car, believe it or not.

Assemblyman Ohrenschall:
In that case, young Mr. Hansen might be looking at a trip to Elko, or perhaps a loss of his rights. In that situation, we believe that young Mr. Hansen deserves to understand his constitutional rights and his privilege against self-incrimination, just as very intelligent, adult Mr. Hansen does now. Adult Mr. Hansen knows that anyone who is in that situation would say they want an attorney present. Unfortunately, 15- or 16-year-old Mr. Hansen does not

have the brain development to understand that, "I want an attorney present" is probably the best thing that he can say, as opposed to trying to say what he thinks this person in a position of authority wants to hear. Unfortunately, our children and the decisions they can make here can affect the rest of their lives, and they do not understand their rights.

Susan Roske:
I could not have said it better. I agree completely with Assemblyman Ohrenschall that once it becomes an interrogation on a specific offense, the school police officer should cease questioning.

Assemblyman Elliot T. Anderson:
Assemblyman Ohrenschall, I had a question about young Mr. Hansen. Did he have hair?

Assemblyman Ohrenschall:
For the record, I have never seen any pictures. I believe Assemblywoman Cohen might be able to answer that question, but I have heard it was a full, bushy head of curly hair.

Assemblyman Hansen:
Long ago.

Chairman Yeager:
Thankfully, I think the statute of limitations has run out for the shotgun in the vehicle, Assemblyman Hansen, but if there is anything in more recent history, I would advise you to maybe plead the Fifth Amendment.

Assemblywoman Tolles:
I am curious that there is no fiscal note attached to this bill. We are looking at potentially recording interviews or interrogations and the utilization of additional professionals. Can you speak to that?

Assemblyman Ohrenschall:
I, too, was surprised by the lack of fiscal note on the website. It may still be forthcoming, but I do not know what it will look like. In the amended mock-up we tried to ensure that routine talks with children in detention facilities, out on field probation in places like Elko, the Caliente Youth Center, or Spring Mountain Youth Camp would not be affected by these unless the talk was an interrogation and meant, pre-adjudication, to lead to a prosecution. We have tried to limit the bill's applicability to where it is really needed. We are not a money committee, but I would argue that whatever the fiscal notes may be when they do come, protecting our children's rights is something that is worth it.

Assemblyman Pickard:
Something just occurred to me: if we are asking police to wait to question until an attorney is appointed, is a child going to be held in custody until the attorney shows up? What is the mechanism for that? Are we holding the child in a cell until their attorney shows up so police can do the interrogation?

Assemblyman Ohrenschall:
The honest answer is that I do not know how that will work. I hope that it would not lead to increased time in detention and that some of this could happen in the field, especially if the courts can establish a rotation of attorneys. I would need to look to states like Connecticut, Illinois, and Montana that have laws like this and see what they are doing. Perhaps Ms. Roske can shed some more light on that.

Susan Roske:
That would depend. If police do not have enough to arrest a child without a confession, they should know that the child should not be arrested. Police need to have probable cause. If they do have probable cause to arrest a child, the police can arrest them anyway. I think whether the police elicit an admission or confession from a child is pretty irrelevant. If the police do not have enough to arrest him, they will not; if they already do, they will. I do not see how that would play into longer incarcerations or more incarcerations. I hope that answers your question.

Assemblyman Pickard:
Yes, thank you. It was just a fleeting thought.

Chairman Yeager:
I have a couple of questions and I understand, Assemblyman Ohrenschall, you may need to step out of the room for just a moment as you are being summoned. I can ask Ms. Roske my questions and then we can take supporting testimony.

Ms. Roske, if you do not mind I just had a couple of questions on the bill. I am looking at page 4, lines 11 through 13 of the mock-up (Exhibit L) that talks about the Nevada Legislature urging the Supreme Court to adopt rules for attorneys. That provision seems a little unusual to me. I think that, typically, the Legislature mandates rather than asks that the court adopt rules. Is that something you have seen in law before, where the Legislature would be "urging" the Supreme Court to do something? Do you have any historical information whether the Nevada Supreme Court has thought about promulgating these types of rules? If not, is there any information you can provide about why these rules do not currently exist?

Susan Roske:
In response to your first question, no, I have not seen this, but I am not very knowledgeable about the legislative process. I cannot answer whether a declaration or a mandate is more appropriate. As far as rules, if you look at NRS Chapter 62, it is divided into sections—A, B, C, D, E, F, G, H. Section D has to do with procedure. I am not positive, but I think there are very few rules of procedure in our juvenile court system. If you look at the criminal justice system, you see a huge chapter [Title 14] detailing all the procedures; it is very much like a guideline for attorneys and practitioners to use, about how to conduct a trial, what procedures to use, when to file motions, whether you are required to file a notice of alibi. There are rules about aiders and abettors, et cetera. In juvenile court, there are just no rules.

As practitioners, we all just kind of look to the criminal procedure rules as a guide. It is pretty much how cases are practiced in juvenile court. We have managed to get through it.

There was an attempt to change this about ten years ago when the Supreme Court of Nevada put together a rules committee. I was on that committee. There was representation across the state to develop rules for juvenile court, but it kind of fizzled out. It was very difficult to get consensus and agreement; so as a result, no rules were ever promulgated. Last legislative session, we put together a rule on competency because we have case law in Nevada that says a child has the right to be competent at a delinquency proceeding. Through Justices Nancy Saitta's and James W. Hardesty's Commission on Statewide Juvenile Justice Reform, we put together a comprehensive statute on competency so we now have that in the books.

Rules applying to juvenile court are very hard to find in Nevada. We do have the Supreme Court ADKT No. 411 that gives guidelines, but not necessarily mandates, on professional standards for attorneys accepting indigency appointments. These are standards of practice that set out what is expected. It is very comprehensive and, in my opinion, very appropriate for practitioners, but it is not mandated. I would like to see those rules of performance mandated, but it is just a recommendation or a guideline at this point.

Chairman Yeager:
Thank you for that response. I have one other question. Page 3, lines 5 and 6 of the mock-up (Exhibit L) say that a child has to be given a reasonable opportunity to consult with an attorney prior to waiving their right to be represented by an attorney. That section appears to talk about juvenile court proceedings, so do you envision that this provision would kick in when the child is in front of the juvenile court? Would the judge ask the child whether he or she is going to waive the right to an attorney, or is the idea that before that question was asked, the child would have a right to consult with an attorney? Is that what section 3 is trying to accomplish?

Susan Roske:
Yes, that is exactly what section 3 is trying to accomplish. Again, about 10 or 12 years ago, the statute was amended to include the provision that the child has to make a knowing and intelligent waiver of the right. At the time that the requirement that children could not waive counsel was pursued, the bill was amended to include language that says a child may waive their rights as long as they knowingly, intelligently, and voluntarily do so. That language was put in the statute at that time. Practitioners feel that children do not understand what they are waiving. To get to the point where they are making a knowing, intelligent, and voluntary waiver of those rights, children really need to talk to a lawyer first and gain an appreciation for what that means. Most children do not even know what lawyers do. We would anticipate that, at the stage that a child is coming in to court without counsel and the court is asking them if they want to waive counsel, an opportunity to consult with an attorney be made first before accepting that waiver.

Chairman Yeager:
I do not see any other questions so we will open the meeting for supporting testimony. If there is anyone who would like to testify in support of A.B. 341, please come to the table. It does not look like we have anyone in support in Las Vegas. We do have two people here in Carson City.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
I want to quickly state that we support this legislation for many of the reasons that were mentioned today, specifically that children really do not understand what their rights are. There is recent precedent from the United States Supreme Court even though it really had more to do with Miranda. In *J.D.B. v. North Carolina*, Justice Sotomayor stated that children will often feel bound to submit to police questions when an adult in the same circumstances would not. I think that that is what we need to consider when we are designing policy. I also think there is a longer conversation to be had about how that Supreme Court case instructs police interrogations of children, but that is something we could talk about offline. It would address some of the questions that Assemblyman Wheeler had. We also support video-recording because it is integral to the subsequent assessment of the juvenile's comprehension of their Miranda warnings, and the nature, setting, and circumstances of the interrogation. Thank you.

Assemblyman Pickard:
Do you know if officers are currently recording those interviews? It is my understanding that they do, but you probably know better than I do.

Holly Welborn:
I think the practitioners would know better than I would.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
I wanted to state my support for A.B. 341 for the record. We appreciate the intent of this bill and the spirit of what it is trying to accomplish. I would also like to answer Assemblyman Pickard's question. Yes, I would say that most police agencies are well-enough equipped when they conduct a police interrogation that they have it audio or video recorded, or both.

I agree with much of what has been said this morning concerning children not understanding their rights. I am a newly minted juvenile public defender. I have only had a month of experience as a practitioner, and it is an honor and a privilege to represent these children. I served 14 years in the adult section of the Washoe County Public Defender's Office, and I will say I agree that children do not understand these terms. They do not understand their fundamental rights. They do not understand the term "self-incrimination" as my adult clients do. My adult clients seemed to be more knowledgeable and savvy when it came to understanding and invoking or waiving their rights, but many times children simply do not have a grasp of these difficult legal concepts. It is imperative that they have access to an attorney to help them forge an attorney-client relationship and have that practitioner explain what these rights mean and whether they are going to invoke them or waive them based upon

the advice of counsel. We support the concept and the spirit of having police interrogations recorded for courtroom proceedings and to protect the integrity of the proceedings. With that, I just wanted to register our support of A.B. 341, and I would offer my services down the road if there were any need to work on any of the language in this bill.

Kristina Wildeveld, Attorney, Las Vegas, Nevada; and representing Nevada Attorneys for Criminal Justice:
On behalf of Nevada Attorneys for Criminal Justice and as a private criminal defense attorney for the previous 21 years, I am offering support on behalf of A.B. 341. I would like to answer Assemblyman Pickard's question: No, they do not currently record interviews with children. Thank you.

Assemblyman Pickard:
I was asking about interrogations, not early investigatory interviews, although I do not understand the difference between the two. My understanding is that all interviews are investigatory, including the interrogations. I was talking about interrogations and my understanding was that those were all recorded. Is that not the case?

Kristina Wildeveld:
That usually occurs more often in sexual assault cases or in juvenile sex offense cases. Those interrogations are recorded because they are of a different nature. Interrogations are not recorded.

Chairman Yeager:
Is there anyone else in support of A.B. 341, either here in Carson City or down in Las Vegas? [There was no one.] I will now open up for opposition testimony. We will start up here in Carson City. Mr. Callaway, would you like to start?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I would love to start. I am here in firm opposition to A.B. 341 as it is written. I saw the mock-up (Exhibit L) today and I briefly went through it, but I have not had a chance to fully evaluate it so I will speak more to the bill as written. I think some of my concerns carry over to the mock-up as well.

As I have said numerous times before in this Committee, violent crime in Clark County is on the rise and we are seeing an increase in violent crime among offenders. I think that when we hear the term "children" we often forget that there is a huge spectrum between a 12-year-old child who is committing delinquent offenses and a 17-year-old, who turns 18 in a couple of months, who is a seasoned gang member with a criminal history, and who may have just shot and killed someone. I think that we need to take those things into account.

I would also say I agree with the comments made by Assemblyman Hansen about the *Gault* case that has been in effect for 50 years—slightly longer than I have been alive. I am not aware of a significant problem in Clark County, in particular, with juvenile cases or juveniles

being denied their rights. We do advise juveniles of their rights per Miranda, which include their right to have an attorney present and their right to have a parent present on all custodial interrogations. I will come back in a second to custodial interrogations and touch on the questions that were asked by Assemblyman Wheeler.

I think this bill ties the hands of law enforcement and hinders investigations, particularly in the field. I will explain why. In section 2, subsection 4, as has been discussed by the Committee, it requires an attorney to be present if a juvenile is interviewed—I understand that "interviewed" is going to be slashed out—or interrogated by an officer. Again, I think the key piece that is missing there is "custodial interrogation." Typically, when we talk about Miranda and the particular training that officers receive on interrogation, we refer to custodial interrogation when someone knows—or a reasonable person would know—that they are under arrest, they are not free to leave, and they are going to be charged with a crime. That is different from a "field interrogation."

In a field interrogation, I may be asking someone a question, in the field, about a potential crime, and I may not know yet if they are a suspect, a victim, or a witness. I would like to give you an example of this that came to mind. Say there was a party with a large number of juveniles present, there were some gang members there, and someone was shot. It is not uncommon for this to happen in Clark County; every other weekend something like this happens. An officer arrives on the scene and there are people running everywhere and he detains a few people who witnesses thought were involved, saying they saw him with a gun. The officer is now in a situation where he has to gather information, and he has to try to determine what happened. The shooter may still be running around out there, and the officer needs to do an interview.

Again, I know that "interview" is going to be struck out, but we could argue whether or not that is an interrogation, because, again, I believe the word "custodial" is missing from both the mock-up (Exhibit L) and the bill. I believe that in cases where an officer may have three or four juveniles detained, A.B. 341 would require the officer to have to wait for an attorney to show up at the scene—and if children are deemed by the law to be indigent, the court has to appoint an attorney. The officer would have to make a decision right there and then: does he have probable cause to arrest these people or does he not have probable cause? As police officers, we cannot wait for two days for an attorney to show up. We would potentially be releasing someone who was involved in a violent crime if we could not ask any questions, or if we did not believe at that particular time that a juvenile, who may be 17 years old and turning 18 in a month, did not have the ability to waive their right to have an attorney present or their right to have a parent present. I think that is a major concern.

Again, the bill does not differentiate between suspects and victims when we talk about interrogation. In response to the questions raised by Assemblyman Wheeler, yes, police officers are trained to identify when an interview or an interrogation goes from the person as a witness or a victim to one where the person is now admitting that they have committed a crime. At that point the interview ends, the person is advised of their Miranda rights—which, again, in the case of juveniles, have been around for a half a century—and that person

then has an opportunity to waive those rights. If we mandate that juveniles cannot waive those rights, that they have to have an attorney present, it delays and hinders investigations.

I also believe that in regard to the videotaping of interrogations, if the case is a category A or B felony, if it involves a sexual assault, or we believe the juvenile may be certified as an adult—if it is a homicide—we record those interrogations. Probably the most famous one over the last couple of years was the one where the mother was shot in the road rage incident. The video of that interrogation has been all over the news and it has been challenged in court—that is my understanding.

That brings up another important point. Why is this bill needed when officers in our agency are all wearing body cameras, and the majority of these interviews are video recorded? There is an opportunity through the court process, I believe. If the attorneys and the judge believe that the juvenile's rights have been violated, if they did not understand their rights when they were given, there is a process in place either to consider that or to throw the case out altogether.

I also find the comment that was made earlier, that a juvenile does not have the mentality to waive their right to have an attorney present but they might have the thought process to waive their right to FERPA, to be interesting. I do not even know what FERPA is. I could not waive my right to FERPA because I do not even know what that is. The thought pattern here is interesting, and I have major concerns with it. I do not think the bill is needed; I think it hinders and delays law enforcement. I would be happy to answer any questions.

Chairman Yeager:
Thank you, Mr. Callaway. We have a couple of questions for you. We will start with Assemblyman Watkins.

Assemblyman Watkins:
I will start with your last question first because you were addressing my question about whether children have the mental capacity to waive their constitutional rights. The testimony was that they actually cannot waive FERPA rights; children must get parental consent. Not only can children not waive FERPA rights, they cannot vote, they cannot serve in the military, they cannot get married, they cannot get a tattoo, they cannot drink, they cannot smoke, they cannot enter into a contract, they cannot buy a car—all because we believe, as a society, that they do not have the mental capacity to make good decisions in that regard. Given that, why should we think that they have the mental capacity to waive their constitutional rights?

Chuck Callaway:
I will consider that a comment, but in my opinion I think it depends on the juvenile. My son is 17 years old and he is highly intelligent. I can tell you, standing here before you today, that I believe he does understand his rights, and I would be confident that he has the ability to waive those rights. Maybe other juveniles do not. There are also adults who, perhaps, do not understand their rights, so it runs the gamut. Are we going to mandate that adults

automatically have to have an attorney present? I ask that because there are adults out there who did not get a high school education. They do not understand their rights. In the interest of public safety, I think that when we have officers trying to investigate a potential violent crime in the field, it is important that we do not put things into the law that may not be needed or things that further hinder and delay investigations. That could result in a person being out on the street, further victimizing our communities.

Assemblyman Watkins:
Thank you for that. In response to your point, you know your child best and you have the ability to waive the rights of your child concerning all the things I just mentioned with the exception of voting. You cannot allow your child to vote but you can provide waivers for them to get married or to serve in the military. You cannot provide waivers for drinking and smoking, but in that instance, the logic in law is still the same. They do not have the ability to make that decision themselves without consent of a parent.

My last statement was, in fact, a question. I do not understand. Here is a separate question to address that point. How often do children assert their Miranda rights in comparison to adults in Clark County?

Chuck Callaway:
I could not answer that. There are hundreds, probably thousands, of interviews, and—as this bill states—interrogations taking place on a daily basis in Clark County. I do not know that it would be possible to track or determine that this number of people waived their rights and this number did not. I will tell you from personal experience from when I was working on the street in uniform that I have had juveniles who I interviewed who said that they would not speak to me unless they had an attorney present. We make every effort to contact parents when we are in the field. I have had parents tell me that they would not come out there, and that we should take their child to jail because they were fed up with his stuff. There are two sides to the coin. It is not a black and white in law enforcement that every child does not understand their rights and should automatically have an attorney present. That is my respectable opinion.

Assemblyman Watkins:
I appreciate that. Part of your testimony was that this bill would hinder investigations because officers would have to stop questioning when an interview moved to a custodial investigation or an interrogation. Does that not occur now? You must inform an adult, when it has shifted from one to the other, that you are now interrogating them and they have the opportunity to assert their rights; if they do, things stop. That is the normal procedure, right? If a person says that they want an attorney and you have asked an hour's worth of questions, you have to stop. If you have probable cause, you can throw them in jail; if you do not, you have to let them go until an attorney is present. Is that not how it works, currently?

Chuck Callaway:
Yes, that is how it currently works in a custodial interrogation. This bill says "interrogation or interview;" it does not say custodial interrogation. That is how the process works when

you are interviewing someone who you believe is a witness or a victim and then through the course of the interview, all of a sudden, they are admitting to you that they have committed a crime or are part of a crime.

What I am referring to is hindering and delaying an investigation. I will take the scenario I described a bit further. The way this bill is written, if I stopped a 17-year-old driving a vehicle who I believed was a drunk driver, I would not be able to question him. I could not ask if he left a bar or had something to drink until his attorney showed up. That is the way this bill is written. I would be in a situation where I would sit there in the field and wait for an attorney to show up, or I would have to let a potential drunk driver go. In the case of the party scenario I described, the officer had multiple juveniles, someone had been shot, and the officer did not know who was a suspect and who was a witness because everyone was pointing the finger at everyone else. The officer may have someone who he believes may be a suspect, and he is limited on how he can question him. This situation is not yet a custodial interrogation but it is an interrogation—the officer is asking this person what happened, if he was involved, if he saw who shot the deceased. I believe that a case like this, where police cannot interrogate a person in the field without an attorney showing up first, hinders and delays that investigation and potentially lets the shooter stay on the street longer, victimizing or endangering the public. That is my personal opinion, having dealt with these cases in the field and seeing how the language in this bill is written.

Assemblywoman Krasner:
First, I want to thank you for everything you do to keep our communities safe. In an effort to try to balance, in this bill, would you be more agreeable if language was inserted that said "custodial interrogation," so that law enforcement investigations are not hindered or delayed?

Chuck Callaway:
Adding the words "custodial interrogation" provides me a level of comfort. I still have a concern with a mandate that an attorney be present, because I think there are cases where a juvenile can decide to waive that right. I want to go back to the *Gault* case. My understanding of that case is that it said that juveniles have to be afforded the same rights as adults, and in addition to that, they have to be given the right to have their parents present, a right that adults obviously do not have to have. The *Gault* case did not say that an attorney is mandated to be at the scene even if the child says he does not want an attorney. *Gault* did not say, No, you will have an attorney here, by gosh—if it takes five days, we are going to get somebody here for you.

I have a concern from an investigative process. I think there are procedures in place that address when an officer is believed to have violated a child's rights or if the interrogation was unfair. I do not have a problem with recording interrogations. I do think that there are cases where juveniles start talking to officers in the field, and an officer says hold on, this has to be recorded. This can be true with any witness or suspect. There are also situations where people say they are not going to speak to officers if the officers record them. Some people say they will not tell an officer what happened if they are put on tape. That is something

police officers encounter. Are officers then supposed to say, Okay, forget your testimony then, because if we cannot record it, it is no good?

As I said earlier, there is not black and white in law enforcement. Officers out in the field deal with things that are gray. There is no set rule that every time officers encounter a certain situation, this is what they do every single time. I think when we restrict officers in the field, we tie their hands, we hinder and delay investigations, and we potentially have a negative impact on public safety.

Assemblyman Elliot T. Anderson:
I have the same line of thinking as Assemblywoman Krasner. How can we potentially thread this needle? We make distinctions in juvenile justice law as to age or the type of crime that was committed. Are there any compromises we could make with this bill as to age, or maybe certain children are more susceptible than others? Do you have any ideas about this?

Chuck Callaway:
As I said, juvenile issues cover a broad spectrum: everything from the 9- or 10-year-old who committed a delinquent act, to the 17 1/2-year-old who has a lengthy criminal history and just shot someone. If we believe that the younger children are being accused of more serious offenses, I am open to discussions about mandating that parents or attorneys are present. I am open to those discussions, but I just think that to broadly brush the whole group, and say that everybody gets an attorney present before any interrogation continues, is the wrong move.

Assemblyman Elliot T. Anderson:
I am all about making commonsense distinctions where applicable. That is what the law does, and I encourage everyone to think creatively about how we can focus in on where there might be the most potential for a problem for your average juvenile.

Chairman Yeager:
As a follow-up, Mr. Callaway, did you have a chance to speak to the sponsor of the bill about your concerns before this morning?

Chuck Callaway:
I did not, Mr. Chairman, nor did anyone reach out to me about the bill.

Chairman Yeager:
As a matter of course I would like to let everyone know that if you do have a problem with a bill, it would be much appreciated, if you have a chance, to let the sponsor know that beforehand so some of these issues could be worked out. I obviously understand things are moving very quickly in the building—and that will only increase over the next two weeks—but even if it is a quick email or a text message or grabbing somebody in the hallway, I do think that helps a little bit with working the bills.

Chuck Callaway:
Thank you, Mr. Chairman, and I, in no way, mean to be disrespectful. I certainly want to reach out to sponsors of bills. As you know, I am currently tracking over 300 bills that, in my opinion, have a significant impact on public safety, so I am making every effort to reach out to sponsors as I can.

Chairman Yeager:
I understand, Mr. Callaway. We have a couple more questions for you.

Assemblyman Pickard:
We know crimes are not only committed between the hours of 8 a.m. and 5 p.m. when an attorney might be available. Your testimony was interesting, given the quick pace of the questioning. When the responding officers are getting into the mix and trying to figure out what is going on, that shift from the basic investigation to an interrogation of a possible suspect can happen in a moment. Then there is the probable cause question and possibly turning somebody loose; that should not be. Assuming that the officer thinks that the interview is changing and the person they are questioning is becoming a suspect, would they then have to be detained for the evening, until an attorney could show up, before that discussion could continue? How would that work in reality?

Chuck Callaway:
Officers typically refer to this situation as a "Terry stop." I think this reference came from *Terry v. Ohio*, 392 U.S. 1 (1968). This decision said that officers can only detain someone for up to an hour in the field without probable cause. Once you reach that threshold of an hour, you have to make a decision: Do I have probable cause to make an arrest on this person or do I have to release them? In my comments earlier, I said that I have concerns about putting things like this into the law.

In the party scenario, I show up at the party; people are running everywhere, I interview this person who several people have said they think is involved, and I start asking that person questions. Did you see what happened? Were you at the party? At that point, they are not a suspect, necessarily; they may be just a witness or a victim. As I continue questioning, I determine that this person may be the suspect; he may be involved in this crime. He may have been the trigger-puller. At that point, everything ends, based on the language in this bill.

In that situation, if I have probable cause, I am going to arrest that person and take them into custody, and they will sit in jail—as the comment was made earlier—until an attorney shows up. There is always the possibility that that attorney or the court says, Officer Callaway, you started talking to my client out in the field, asking him these questions, and his attorney was not present out in the field when you asked him these questions. So, these are fruits of the poisoned tree, and this cannot be used against him.

Again, we are lumping the two types of interrogation together. It goes back to custodial interrogation versus just the word "interrogation." In my mind, an interrogation is questioning somebody—they are not necessarily in custody nor do we necessarily believe they committed the crime. In an interrogation, I am asking them questions about what they saw or what they did. I do not know if they are a suspect, a victim, or what, at that point.

Assemblyman Wheeler:
I would like to go back to the custodial interrogation you were talking about. Using one of the examples that you used, you have a 16- or 17-year-old that is pulled over for driving under the influence (DUI) and you basically have probable cause because you have seen the erratic driving. When you used that example, something leapt into this feeble brain of mine and it was this: could you even give that person a field breathalyzer or a field sobriety test since it would actually be an interrogation at that point?

Chuck Callaway:
It has been a while since I have done a DUI investigation but I will take a shot at it. Under the implied consent law in the state of Nevada, when a person gets a driver's license they consent to giving a breath test. The law has changed over the last few years with regard to blood tests—you have to get a search warrant if a person refuses a blood test—but my understanding is that you can still force a breathalyzer test. If you have probable cause that the person is impaired through their actions or their driving—you smell alcohol on their breath, their demeanor is suspicious—you could theoretically arrest them at that point, without asking them any questions, not interrogate them because their mandated attorney is not there, and then take them to the detention center where you could force them to submit to a breathalyzer. If they refuse to take a breathalyzer and you can only take blood for whatever reason, you would have to get a search warrant. Then, depending on the outcome of the breathalyzer or the blood test, their license would be temporarily suspended by the Department of Motor Vehicles pending a hearing of the outcome of that. At least that is the way it used to work. There may have been some minor changes. In that scenario, you may not have to question the driver. Obviously, an interrogation helps you build your case, but in that scenario, if the officer has to have an attorney present, I would not question them at all. I would just proceed based on my observations and the probable cause I have for the DUI, without asking them any questions.

Assemblyman Wheeler:
Under this bill, would that not change? Would that actually become part of the interrogation—of a minor, not an adult—would that not actually become part of the interrogation? At that point, would you actually have to have an attorney present to give a field sobriety test, a breathalyzer, or a blood test?

Chuck Callaway:
That brings up a valid point in my concern with the language in this bill, as far as "interrogation." Under normal circumstances, you can ask someone preliminary questions. You can say, Hey, where are you headed? Did you have a beer tonight? Have you been drinking anything? Do you have any medical conditions that might have made you swerve

the car? In this bill that could be deemed to be an interrogation, even though it is not custodial. Under this bill, when you realize that this person is drunk and you have enough probable cause to arrest, at that point they are taken into custody and they are given their rights per Miranda. If they are a juvenile, they are read their rights per the *Gault* case. At that point, the juvenile would go through the process and have the ability, under current law, to say they want their mom or dad here, or they want an attorney. Under this bill, the juvenile would have to have an attorney before any of this occurred.

Chairman Yeager:
We can let Assemblyman Ohrenschall address that in his closing remarks. I do know that in the adult scenario, courts have said that questioning related to traffic infractions, as well as field sobriety tests, is not considered custodial interrogation, so there is no right to counsel attached. You are correct in that if someone refuses a blood draw, the U.S. Supreme Court has said that the officer needs to get a search warrant. I would imagine that would be the same in this kind of proceeding, but we will let Assemblyman Ohrenschall address that in his concluding remarks.

Assemblywoman Tolles:
Thank you for your comments. I think this is a great example of the complexity of the kinds of bills that we are bringing forward. I think that you are right to comment that communication is two-way, in terms of the sponsors reaching out to the stakeholders and vice versa ahead of time. You said you are tracking 300 bills and, for the sake of the number of bills that we are going to be addressing in the next two weeks, I would just like to second that sentiment. It is important for us sponsors to reach out to all the stakeholders ahead of time so that we can try to work some of these things out before it comes to hearing.

Chairman Yeager:
I agree with that, although I know there are many familiar faces in this room, so I would expect you to grab us at some point if you know you are going to oppose any of the bills that are going to be heard in here, particularly for those who are in this room every day. I understand if you are not here all the time it can be difficult, but we will certainly try to do our part as well.

Assemblyman Fumo:
I am going to ask every person that is in opposition to the bill if they reached out to the sponsor of the bill before they make their statement—yes or no—just so we have that in advance. It seems, from your answers, that you are willing to work with the sponsor of the bill to correct some things. If we do not draw the line at the age of 18, where do we draw the line? Is it not true that even police officers may invoke their right to remain silent under *Garrity v. New Jersey*, 385 U.S. 493 (1967)? Is it true that police officers are supposed to do this with any request for an interview? Even officers have these additional protections. Where do we draw the line for children?

Chuck Callaway:
I think you bring up a great point, it is a policy decision as to where we draw the line for children. I think *Garrity* is a little bit different because it involves a management-employee relationship and what an employee can be forced to say during an internal investigation—and that that cannot be held against the employee in a criminal proceeding. For example, a police department thinks that a police officer who is interacting with the public with a gun is under the influence of cocaine. The employer has a right to say to that police officer, Hey I am going to question you about whether you are using cocaine, you are going to answer those questions, and if you refuse we are going to fire you. Under *Garrity*, whatever the police officer tells the department cannot be used in court. That is my understanding of *Garrity*; with Miranda rights, however, someone is saying these rights have been afforded to you by the *Constitution* and by the courts. Now, instead of having the choice to waive them, in this bill we are are mandating them on you. In this bill, you do not have a choice to say that you do not want to exercise your right. We are mandating that you get this right.

I agree with you about age. As I said earlier, there is a huge difference between a 17-year-old and a 9- or 10-year-old who may have engaged in some type of delinquent behavior.

Assemblyman Fumo:
I think if you work with the bill sponsor, things like the age, "interview" versus "interrogation," and I think whether a person is a target or a suspect of an investigation can be addressed. Even the federal government sends out target letters to let people know what classification they fall under. Officers can cease questioning at that point, absent exigent circumstances. Those are things that you could work out with the bill's sponsor.

I have that same question for you; did you reach out to every person who is going to testify in opposition?

Chuck Callaway:
Mr. Chairman and members of the Committee, I hope I do not come off as disrespectful. I am very passionate about some of these issues, especially when I hear people give testimony that the police are lying to children to purposely get them to admit to crimes. I get very frustrated with those types of things. I certainly hope that the Committee does not take my passion on this issue as disrespect to the Committee.

Chairman Yeager:
Thank you, Mr. Callaway, and thank you for your testimony this morning. We will let you off the hook at this point. Members, if you have more questions for Mr. Callaway or law enforcement, perhaps we can take those offline.

Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office:
I will start off by answering Assemblyman Fumo's question. I am not going to make an excuse; I was out of the country last week, and I was not able to meet with the bill's sponsor prior to when this legislation came down.

We are in opposition to A.B. 341 in its current form. We believe that justice delayed is justice denied. Provisions set forth in A.B. 341 severely tie the hands of law enforcement—not just law enforcement but the entire juvenile justice system. We already have existing laws governing parental rights and notifications of juvenile suspect contact. This bill seems to infringe upon the rights of parents by mandating an attorney be present for questioning. This mandate could very well act against the wishes of the juvenile's parents, their legal guardians, or the children themselves for that matter. This bill, in its current form, would limit law enforcement contacts with suspects who may also be victims. I think my counterpart, Chuck Callaway, spoke to that very eloquently. Sometimes, during the course of questioning, we do not know where our investigations are going to lead. Witnesses sometimes turn into suspects, and suspects also turn into victims. Our investigatory realm is very circular.

The provision regarding electronic recording, while always preferred, does not account for failures of our equipment. In the Washoe County Sheriff's Office, all of our custodial interrogations are audio and video recorded. We have WatchGuard cameras in our vehicles at this time, but we do not have body cameras. While some interrogations or interviews may be conducted in the course of a traffic stop, if we were to go up to the residence and question a juvenile regarding a burglary or similar crime, those interviews currently would not be recorded unless we were able to develop enough probable cause to take them up to the station for questioning.

Section 2, subsection 4 of the bill does not delineate the difference between children who are suspects, victims, and witnesses. They are all mandated to have an attorney present for a hearing. It is kind of vague in the sense of who needs to have an attorney. The large volume of disclosures in cases that are unfounded, investigated, and solved quickly by law enforcement will now be bogged down by mandatory attorney regulations. In Washoe County, we do not go out actively looking for juveniles who are committing crimes. We are either called for service or we conduct a traffic stop; we conduct our investigations that way. Something happened that precipitated law enforcement contact. Where I am going with this is that a lot of cases are founded, initially, upon an assumption—somebody says something. We are able to solve a lot of those cases without having to go forward by talking with those people, asking delineating questions, and then either not having to bring formal charges or merely finding out that these crimes did not happen in the first place.

I think Assemblyman Wheeler brings up some excellent points when talking about DUI arrests; that is one of my biggest concerns. Do subjects of DUI interrogations have the ability to say "no"? Would we have to bring an attorney out into the field to answer the simplest of traffic stops? Oftentimes, when we are talking about law enforcement interactions with the juvenile public, a lot of them relate to minor traffic violations or infractions that turn into larger cases. Many times, burglary rings are disturbed by a simple traffic stop. A noise disturbance or a party call turns into a sexual assault, and I just think that, in its current form, this bill would hinder our ability to conduct investigations in a timely manner.

Lindsay Anderson, Director, Government Affairs, Washoe County School District:
I spoke to Assemblyman Ohrenschall yesterday. We originally had a meeting that was cancelled because legislative schedules are crazy. I spoke to him myself, but I spoke on behalf of all school districts. Hopefully you can appreciate that we try to do that so you do not have to have the same conversation with three different people from the school district. I did speak to him—in fact I interrupted his lunch yesterday, which I apologized for by being an awkward stalker in the hallway—but I did express our concerns and confirmed that there was intent to include school police in the legislation. We have concerns about that, as school police are sworn peace officers. You have heard the concerns about the difference between "interview" and "interrogation," and I think that is particularly relevant in the case of school police officers that are really on school campuses to develop relationships with children and be a preventative force, and make it feel like a comfortable relationship between our students and school police officers. In my opinion, the line of where an interview becomes an interrogation is particularly difficult in the school police relationship.

Another concern we have has to do with bullying investigations. While bullying is not currently considered a criminal offense, oftentimes bullying investigations can become harassment and/or battery cases. We have very tight timelines for our bullying investigations; they have to be complete within two days, and we are concerned that the provisions in this bill may somehow interrupt our ability to comply with that law.

I have two more concerns. The bill refers to educators, and I know that was mentioned a couple of times already today. There is no definition of "educator" in NRS, and that may be something that needs to be addressed. Does "educator" include school secretaries, bus drivers, or private tutors? If it includes any employee of the school district, we would just want to know so we could inform our staff that they may be brought in, in a situation like this. As the bill is written, that could include somebody like me.

To the point that was made earlier about the fiscal note, it turns out that we were not asked to provide a fiscal note for this piece of legislation, which I do find strange, because there are so many others. In addition, we are not equipped to record interrogations at each individual school site. We do have a central location where, if we are going to bring a child, we are equipped to do that, but if this is going to be a frequent occurrence and it was going to be done at the school location, there could be a potential fiscal impact. Thank you for your time.

Chairman Yeager:
Thank you for your testimony. We will go down to Las Vegas. Do we have anyone else in Las Vegas for opposition testimony other than the two people at the table? If so, could you raise your hands? We will take the testimony down there and then we will come back up to Carson City.

Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Justice Division, Clark County District Attorney's Office:

I am from the juvenile division of the Clark County District Attorney's Office. I know we are tight for time and I know my colleague, Mr. Martin, is up north so I am going to let him speak on behalf of his agency. However, I would like to point out a good way to illustrate the issues we have in the juvenile court system for the Committee. How many trials were conducted in 2016? That would give you an idea of how adversarial and terrible things are going for juveniles out in the field. We had 12 trials. I am kind of embarrassed to say that, because I do not want to lose positions in my office, but we had 12 trials last year. All of those children had attorneys—they knew the law, what they could argue against or suppress, all of those things—and we had 12 trials, including juvenile sex offenders.

Assemblyman Hansen, I appreciate your comments because I do feel that I bend over backwards every day to ensure that we are working to rehabilitate these children—every day. When I see words in statute such as "interrogation," I feel that we are moving away from a non-adversarial system and pushing ourselves into an adversarial system. I have worked really hard to get rid of that environment over the course of my tenure, which has been about seven years of doing delinquency work.

We get about 12,400 referrals a year to the juvenile justice system. While Assemblyman Ohrenschall said that we do not usually file charges for truancy anymore, truancy is still a potential charge. Just because we do not file truancy charges today does not mean that we will not start charging it again in the future—and that would potentially add another 30,000 referrals. If we break that number down, that is approximately 34 investigations in the field each day, concerning everything from petty larceny to murder. That is a lot of attorneys that we will need out in the field.

I know that the county does have a fiscal note attached to this bill—I am pretty sure it will be put in because we have all discussed it. I am not sure how the county is going to pay for all the attorneys they are going to need, to include the time to run to the field to be there or to whatever central location is decided upon. That would be another 12,400 referrals on top of whatever other crimes or delinquent acts are being investigated.

I would like to answer Assemblyman Fumo's question. I am not up in Carson City full time, although it feels like I am. Alex Ortiz from Clark County—or John Jones, depending on who we need at the time—is our mouthpiece to make the rounds and talk to sponsors. It is my understanding that Mr. Ortiz did go to Assemblyman Ohrenschall about the bill, but I am not up there full time so it is a little more difficult for me to do the same. I just delegate it to Mr. Ortiz.

We sit in opposition to A.B. 341 because I do not know what we are trying to fix. Our system is not adversarial. This is illustrated in section 2, subsection 1(d), where it explains that current statute says that this "May be conducted in an informal manner." Even the cases that were discussed under NRS 62C.200 are cases where children have already been issued citations. Those are investigations that have already been done in the field,

where instead of using probable cause to arrest, police just issue juveniles a ticket. Even though the statute allows children to waive their right to an attorney, if we decide not to file a petition, we provide an attorney. In the cases where we decide not to file a petition—about 5,000 cases a year—we believe we can rehabilitate these children on these first-time misdemeanors. There are still investigations in the field prior to writing that citation, and this bill would require an attorney to be present if that officer is going to question that child.

I want to return to the 12 trials with attorneys, and there are two parts to this. Assemblyman Watkins, children currently have the right in statute to waive their right to counsel, but we do not let them. In fact, the Clark County District Attorney's Office begged for attorneys to be present on portions of cases called consent decrees, because the court told us that we could negotiate the terms of a consent decree with a child. We said we could not; we wanted children to have attorneys present for that. The District Attorney's Office asked for attorneys, and we wanted the Clark County Public Defender's Office to sign off on the negotiation because the statute tells us that the negotiation is between the state and the child, but the public defender did not want to do that. We guarantee every child has that; the statute does not require it but we guarantee it. I have never seen a child not be represented, and in fact, when they are not represented, the District Attorney's Office asks for attorneys.

I think Mr. Callaway did a great job with the other part of the bill, and I do not need to address any of those issues. As far as the brain development issue, if somebody can explain to me why I treat children differently in the juvenile justice system than I do in the child welfare system, I am ready to have that conversation. In the child welfare system, we assume that children can make decisions for themselves and we give children attorneys to realize their wants and wishes, but in the juvenile justice system, we say that children are not quite ready to make decisions on their own and they need somebody to explain their rights to them. I live in two different worlds where children with the same type of traumatic brain issues have the same types of attorneys, but two different exceptions.

That is my testimony. I would be happy to answer any questions that you have.

Assemblyman Elliot T. Anderson:
I want to start by echoing some of Ms. Duffy's comments, based upon my experience working in the adult criminal division in the district attorney's office. I think most district attorneys, especially, do not want their work overturned on appeal. I think that if there are glaring problems, district attorneys want to remedy them beforehand. I wanted to ask you about the 12 trials as that is an interesting statistic. I was thinking about what sort of volume this bill requires for attorneys, since it requires an attorney in every case. I think a good way to pose this question is to ask how many cases you take in—not how many cases go to trial but how many cases do you file some sort of charge in? That may be helpful to get an idea of the scope of what this bill requires, although I think that number will be under-inclusive considering that charges are not filed in every circumstance. Can you help me get some idea of the number of attorneys required to effectuate the provisions as written?

Brigid Duffy:
Are you asking for the number of attorneys and/or public defenders that would be required if this statute goes into effect?

Assemblyman Elliot T. Anderson:
I just want to get a rough idea of how many cases come through your system so I can get an idea of the scope of the bill. This bill will require a lot of attorneys. While I am normally all about hiring attorneys, I think we need to figure out exactly what this bill is trying to accomplish and get an idea of what the scope of it is.

Brigid Duffy:
Thank you for clarifying that. We have approximately 12,400 referrals per year. About 7,500 of those are diverted through our intake program or into The Harbor program in Clark County. I want to clarify that I am only speaking about Clark County. This is an approximate number, and I would have to go back to my original presentation to the Committee to get an exact number. We filed approximately 5,000 petitions in 2016. Our filings are way down from where they were before—way, way down—and that is because of the build-up of our diversionary programs as well as the fact that the District Attorney's Office reduces gross misdemeanors and felonies and lets them be handled in intake as well, if they are first-time offenders.

We already give every child an attorney in Clark County when they show up in court; if they cannot afford one, we make sure they get one. If we expand the law into needing attorneys during interrogation—that is just so adversarial and not what the juvenile system is supposed to be—then we must assume that is at least 12,400 referrals because that is all of the investigative stage on our law enforcement side, prior to even bringing the juveniles into the system; all of that would need to be covered. In addition, not every case that is investigated ends up with a referral, so that number would probably increase an additional amount on the 12,400. This would be a huge fiscal note; plus we would also have to cover weekends, holidays—crime does not stop and delinquent acts do not stop either. That is the best I can do. I am sorry, Assemblyman Anderson.

Assemblyman Elliot T. Anderson:
I do not think you should be sorry; I think that was pretty responsive. I think it is really hard to get the exact number right. I think knowing the number of referrals gives us some idea of the scope because there has to at least be some police contact for there to be a referral to your office. I think that at least gives us a baseline.

Assemblyman Watkins:
I have a two-part question. The first part has to do with the comment that we currently do not allow children in Clark County to waive their right to counsel. You said that even though they have the ability to do that we do not allow them to do it, even though it is not in statute, because you believe it is the right thing. My concern is that we, as a Legislature, only have so many shots at this. I can look a voter or constituent in the eye and tell them not to worry, that their child's rights are protected because Ms. Duffy is a good person and she is doing the

right thing—so we do not need it in statute. I believe you are a good person, and I believe you are doing the right thing. You are not, however, going to be there forever and I am not going to be here forever, so I do not see the harm in putting those protections in statute, especially because they are already being provided. I would like a comment on that.

I think you are the first attorney we have had testify in opposition. I would like you to resolve for me the legal juxtaposition in civil law or many parts of criminal law where we say that a child—somebody under the age of 18—lacks capacity to enter into a contract. As a matter of law, we say that children lack capacity. A waiver requires that a person know what they are waiving in order to actually waive it. How could somebody knowingly give a waiver if they have the lack of capacity to know? How do we resolve that as a legal system?

Brigid Duffy:
I am going to go with your second question about lacking capacity first. I absolutely agree with you, and I listened to every word you said regarding the drinking. We do not give driver's licenses until a certain age. Children cannot get married without consent. That is why we have parents for children. This bill goes beyond having a parent present when a child is being questioned. I think you can tell that I am really not fond of the word "interrogation" because it really does make the system adversarial. We have parents to make those decisions, or guardians to help these children. We are talking about the county having to hire attorneys for all of these situations. I think this bill just expands it too much. I agree there are reasons why children cannot make certain decisions. We have to acknowledge that with children, although again, I have two fields that I work in and the standards or expectations seem different for both fields.

We have to at least consider having the parents there. That does not require too much of a fiscal note, but when you start talking about having an attorney present for every interaction you are getting back to an adversarial situation and huge fiscal notes, and you are going down a bad path. I agree with you, and there are reasons why we have those restrictions in place. I thank you for your comments, and I appreciate them.

Our system is only as good as the players that are in it at the time, and you are right; the system could change. I could lose my job tomorrow and there would be somebody different in my place. I think there is a difference in this bill, and that is why I want you to understand that there are two parts to this problem. At the time we file a petition and bring a child into juvenile court, *Gault* would mandate that they have an attorney, and they should, and we do. There is no harm in mandating that in statute, in my opinion. The county may disagree with me—they may have a fiscal note on that that I do not know about. The whole other part is in the field, and that is where I differ from you. I do not see why we need to start bringing attorneys into the field during questioning, versus the practice we already do, which is give every child an attorney in court. I hope that answers your question; maybe it could foster compromise on the bill.

Assemblyman Watkins:
Thank you. It does help answer my question, and I think we had prior testimony about the field. I think we are going to have some more testimony on the field based on the lapel pins I see here. I am referring to the courtroom side of it. Would you be okay with a bill that says children cannot waive their Miranda rights or any other rights without parental consent? That is what I took from your testimony, but you can correct me on that. What happens if the parent is conflicted, legally speaking?

Brigid Duffy:
I mean, they are the parents. They are the adults in the child's life.

Assemblyman Watkins:
What if they are the victim of the alleged crime?

Brigid Duffy:
You mean if there is a legal conflict between parent and child? I think that is a very good question and something that we would have to work on. The language is too broad right now—we cannot cover every situation and we would have to work on the language in order to address those issues. If there were a legal conflict between parent and child, I would think a guardian *ad litem* could be appointed to discuss with the child what is in their best interests. That might even work as a compromise over an attorney because the guardian *ad litem* can step into the shoes of a parent. There are numerous options that we could talk about, because you made a very good point about situations where the parent is the victim. Our office understands that.

Chairman Yeager:
Thank you for your testimony and thank you for what you do for children in Clark County.

Matthew Richardson, Secretary, Nevada Association of Public Safety Officers; and representing Juvenile Justice Probation Officers Association:
I am a juvenile probation officer. I just want to say that we spoke with Assemblyman Ohrenschall previously on this bill. We have recognized some of the changes that he has made, although I do not think that they have gone far enough. Specifically section 2, subsections 3 and 4 talk about investigatory interviews. I think it is really important to point out that when we talk to youth, we try to have conversations. We do not try to turn our interactions into an investigation per se; we do not take an interrogation standpoint. I think that is really important to understand, as well as the fine line between interview and investigation, or interview and interrogation.

Concerning section 2, subsection 4, I think is it very important to point out community safety, especially in the setting of a detention center or our Spring Mountain Youth Camp. There are many times when we have escapes or escape attempts. If we are in the middle of a critical incident of that nature and we need to basically stop any questioning because we need an attorney present, there can create a risk to the community, and there could be a risk to the youth as well.

We would also like to make a clear distinction with regard to some of the informal ways that we handle cases. We are very concerned that we will not be able to handle the number of our informal cases because of the provision that requires an attorney. Many times, if youth do not follow the terms of the informal agreement, we have to have charges filed with the district attorney and then the case becomes a formal process. I think this bill muddies the waters. This bill could raise questions about why an attorney was not present during the informal handling of the case, especially when the youth admitted to the act in order to have the case handled informally. I think this bill creates some ambiguity of how we are going to handle informal cases from now on.

Another big concern is that we are now going to flood the court system with cases that we should have, and could have, handled informally. Now youths have to have an attorney, now they are in the system, and we are probably working against the youth's best interest and some of the best interests of the community as well. I think Mr. Callaway addressed a lot of my other concerns so I will cut my testimony short, but I would be happy to answer any questions.

Chairman Yeager:
Thank you for your testimony. I do not think we have any questions. It does not look like there is anyone else down in Las Vegas in opposition. If that is not the case, please make your way to the table.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:
First off, to Assemblyman Fumo: no, I did not speak to the sponsor prior to coming up here. Basically, our concerns are all of those that have been aired by the other law enforcement agencies. There was just a lot of confusion with regard to what, exactly, is going to be required and how an interrogation is defined. As mentioned earlier, an interrogation and an interview are both meant to find the truth. One just seems to deal with a different level of speaking or talking, so how are we going to draw that line as to whether an attorney is needed? We would be happy to work with the sponsor to try to figure that out. Thank you.

Mike Ramirez, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.; and representing Southern Nevada Conference of Police and Sheriffs:
I am representing the Nevada Law Enforcement Association with 30,000 members. To answer Assemblyman Fumo's question, yes, I did speak with the sponsor. It was literally five minutes before the hearing started but I did speak to him prior to the hearing. Our concerns are pretty much the same as Director Callaway said.

Assemblymen Fumo and Watkins said something about age and capacity. I work graveyard and that runs from 10 p.m. to 8 a.m. In my experience, the juveniles we deal with at 2 a.m. or 3 a.m. know what they are doing. It is not that they are not sure or they do not understand; they know exactly what they are doing. When we get multiple calls saying that a neighborhood has vehicles being broken into, I arrive on slow patrol and I see a couple of children with backpacks. They are looking into vehicles and trying the handles; they know

what they are doing—as opposed to the 10- or 12-year-olds, and I understand what you are saying. When I head to the station at the end of my shift, at 8 a.m., and I get the call that 12-year-old little Johnny is grabbing little Susie's backpack and trying to take it, I understand that they do not understand their rights. I just want to make sure you all understand, the people that we deal with out there on the streets, at the times that we deal with them—I believe and I am sure other officers would agree with me—that they understand and know what they are doing. I agree with Director Callaway's comments about capacity. Maybe there is a fine line or you could carve out a certain age—I have no idea and I certainly could not tell you. You all are the ones that have the degrees so I will leave that up to you, but I would be willing to work with the sponsor in any way we can. Thank you.

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

I am here on behalf of the Nevada District Attorneys Association, and we are here in opposition to this bill. I want to make a few points. We have heard a lot of people talk about diverting with respect to juveniles. When a juvenile comes into the juvenile justice system on a misdemeanor, a juvenile probation officer is allowed to handle that case informally, as long as the juvenile admits—which under this bill would be an interrogation, right? It is a question—Did you do this conduct?—and is designed to elicit an incriminating response. So for every case that the juvenile system attempts to divert out of the court system, we would need an attorney present when the goal is, again, to divert them out of the adversarial system. I think we need to make that clear. As Ms. Duffy indicated rather well and passionately, we do our best to rehabilitate these juveniles, and I just have concerns with this bill and how it seeks to address those issues. Thank you.

John "Jack" Martin, Director, Department of Juvenile Justice Services, Clark County:

I am currently the director of the Clark County Department of Juvenile Justice Services. I have had the pleasure of listening to the conversation all morning, and I am troubled by a little bit of the conversation. In response to Assemblyman Fumo, our representative Alex Ortiz did reach out to Assemblyman Ohrenschall, and we had an impromptu, two-minute conversation out in the hallway before we started here.

I want us to remember that the tenets of juvenile justice are rehabilitation. This morning I have heard nothing but adultification of the juvenile system, once again. That scares me more than any conversation of the waivers and the constitutionalities. I will leave that to the smart people with law degrees and great educations. The reality, for me, is what are we doing to serve children now? Many of you have come down to look at The Harbor. The Harbor is an example of how I believe this bill will absolutely dismantle diversionary programs in Clark County. Right now, we are serving about ten children a day; let us extrapolate that math. I have a public school education and I am going to go with about 3,600 children a year that we would potentially see. We have gone around the Valley; Ms. Duffy and our director at The Harbor have gone around to every area command and every school in Clark County to talk about why we would want children to come there.

We have educated those officers about finding out what is going on in that child's life. Finding out what is going on could be construed as an interrogation. Please bring low-level criminal offenders to The Harbor where we can wrap that child in resources and push them on.

With what you are talking about, an estimated 3,650 children would now require an attorney. Under this bill, 3,650 children would now require an attorney because they were directed to us. They were interrogated by the peace officer, and now we are going to do assessments. We are going to ask more questions, hopefully around what is happening in the child's life, but that might lead to some other interesting stuff. We have made a commitment. We do not plan to escalate anything unless it is absolute life safety. We are going to find out what is going on in that child's life, but now we have to have an attorney present. I know that I am looking at a lot of attorneys and a lot of really smart men and women, but the reality is that maybe you are not operating in the best interests of that child. Maybe this process might dismantle the diversionary program that could divert over 3,600 children from our system each year.

The second piece that bothers me is that we have spent the last seven years instilling in our juvenile probation officers, my teammates, the idea that positive, prosocial relationships are the cornerstone of rehabilitation, with my leadership in Clark County—first as the assistant director and now the director. How do you build a positive, prosocial relationship with a child? You do that with questions. You do that with answers. You do that with relationship-building. You do that in a prosocial manner, so every single time my children in Clark County are sitting down with a probation officer I require an attorney. Could I get one signed up for every time I talk to one of my seven children? I just find this to be oppositional, and that it flies in the face of the tenet of juvenile justice, which is rehabilitation: prosocial relationship-building, absolutely finding out what is going on inside that family, and building structures around that family and that child that are going to improve them and improve community safety. The research across the nation suggests that that is exactly how we should do it. There are plenty of instances, Assemblyman Anderson.

We prepared a fiscal write-up on this, and we do have some ideas of how many attorneys it would require. At the assessment center, we figure we would need about six attorneys, just for the assessment center, especially when we ramp up to go 24/7. We figured on the consent decrees at $100 an hour for attorneys—I should have gone to law school—that would be approximately another $22,000. I know this is a policy committee, but we did some write-ups around the fiscal nature of this bill.

The other part I would like to talk about is out in the field and also in our institutions. Every time a child gets in a fight at one of our institutions, are we going to send a team of lawyers out there? Sometimes there is more than one child involved. These are just some of the operational aspects. How do we functionalize this potential law? I want us to remember, and let us stop trying to adultify the juvenile justice system. The history lesson we had earlier on *In re Gault* was great, but we have had 50 years of operating under *In re Gault*. We have learned some lessons. It was not brought to my attention that there were issues before this,

but if there are issues, let us discuss those locally, and let us find some policy and training and quality assurance levels at the local level to improve them.

Thank you very much for your time this morning and, as I said before, we oppose A.B. 341 as it is currently written. I am happy to answer any questions.

Scott J. Shick, Chief Juvenile Probation Officer, Juvenile Probation Department, Douglas County; and representing Nevada Association of Juvenile Justice Administrators:

I am representing the Nevada Association of Juvenile Justice Administrators Rural Probation Department. I am not going to repeat everything that everybody has said. You have really been inundated with a lot of information.

I teach juvenile law at the Department of Public Safety, and we emphasize Miranda rights there and actually roleplay them to a certain degree. We also talk directly about how to understand if a child is stressed, competent, or whatever, and I think our officers in the field understand those concepts. I know our investigative officers in Douglas County take those things into consideration as well when they bring their tape recorder out before they question a child. I do not like the word "interrogate." Our officers question, inquire, and try to find the facts of the matter. Of course they are concerned about the public safety element, but also what involvement that particular individual may have had with this so we can get back to the work of probation.

I would also say that our detention facilities understand that as well when our kids are taken into juvenile hall or a secure detention facility. We do not question the children. We stabilize them; we want them to trust the system. We want them to work with the system. We want them to take ownership and get on and get out of the system. We do anything we can do to foster that. We do not ask questions about the offense; we just try to get them back to the courtroom.

I want to make one final point. I have listened to exasperating explanations of juvenile rights from our judges to our children and our families, with bilingual interpreters, just to make sure that in the courtroom they understand the rights that they stand in with respect to admission, or fact-finding if necessary, which is basically a juvenile trial. As Ms. Duffy said, there were only 12 trials in Clark County last year. We have not had any fact-findings in that respect. I think when everybody understands the ground that they stand on, the rights that they have, that that cooperation is what really takes precedence in the rehabilitation process.

I have worked with Assemblyman Ohrenschall on a lot of other issues, and I support the man. I support Ms. Roske 100 percent. I think we can find some safe middle ground on this.

Ali Banister, Chief of Juvenile Services, Carson City Department of Juvenile Services:
Thank you for your time, and thank you, Chairman Yeager. Out of respect for time, I just wanted to answer Assemblyman Pickard's question about where the children go before questioning, when they are waiting for their attorneys. What is a little bit problematic to me, when you raised that question, is that they could potentially be housed in our detention facilities. Speaking on behalf of the rurals and speaking on behalf of Carson City, we have a 16-bed facility. Just two weeks ago we were at maximum capacity. It could become very problematic if officers just start bringing these children to our facilities to wait for attorneys. I just wanted to address that. That is very problematic for the rural counties. Thank you very much.

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:
I am a retired homicide and burglary detective for the Reno Police Department. I wanted to bring up a couple of points that I had in my experience regarding my opposition to A.B. 341. First of all, to answer Assemblyman Fumo's question, I did reach out to Assemblyman Ohrenschall. I appreciate the work he has done, and I have worked with him over the years. We only spoke briefly, though, before this meeting because it was the only chance I had and he was able to give me at least a small answer to one of the concerns that dealt with the issue of having an attorney present during an interrogation. I do not know if this has been said because I had to step out of the room for a minute, but what the Committee needs to understand is that a juvenile is detained, they are not arrested. That is one important thing, Also, when they turn 18, their records are sealed. That is another important thing, and that is why they are treated differently. That is why the due process rights they have are much different from those of adults.

I can tell you, briefly, a couple of situations we have had on the street and how this would have hampered our opportunity to rehabilitate juveniles. One was a Washoe County stop of two 17-year-old juveniles who the officer caught in the process of what he believed to be a vehicle burglary in the middle of the night. The police vehicle had a recording device in the dash camera and during the scope of that detainment, he proceeded to interview them about what happened and to interrogate them. Then he chewed them out. He said, "If I take you down, you are done. You turn 18 and now you are going to have a felony arrest for the rest of your life." Because he was given that right, because he did not have to wait for an attorney—because if he did that would not have happened—the recording aspect of that occurred, but the rest of it was the officer taking it upon himself as *parens patriae*—which says that the state does control these juveniles and that makes them different than adults. This officer took it upon himself to do what we do in law enforcement, and that is try to rehabilitate juveniles right then and there. I do not know what happened to those two children—this was about two years ago now. I do not know whether they went on to continue vehicle burglaries or not, but he saved them that night. He could not have done that if he had to wait for an attorney to be present or anything else like that. That is one big issue.

The other situation was a case that I had in January 1978, where three individuals shot and killed a person delivering a pizza. One of those three was a juvenile. I went to what was then Wittenberg Hall—it is now Jan Evans Juvenile Justice Center—and at that point in time they called me over and said that this 17-year-old wanted to talk to me. The very first thing I did, because it was custodial, was I read him his Miranda rights. Not only that, I made sure that he understood those rights, and then he told me what happened; he did confess and gave us the names of the other two. Those two are now in prison for life and he is also. I think he was adjudicated as adult so that was it. Those are a couple of cases that I thought were very important, very relevant to what we are talking about here. I think the point of trying to take care of these children is one thing, but they can be rehabilitated.

I also represent school police officers in both Washoe County and in Clark County. I talked to Lindsay Anderson yesterday about this and I talked to school police officers this morning about that. I had the Miranda statement that they do read, and it is everything that you heard and more. They make sure that when they call a child into that room, because they found something on him, they are not video recorded, they are not surreptitiously recorded, they are not recorded at all. They do, however, start the interrogation. They would have to wait and wait and wait, or in the process they would detain the child and then the child would go to Jan Evans if they had to wait for the attorney and it went past the hour where if they had the probable cause to do so. That is how the system works.

I agree with everything Chuck Callaway and the others said, and I would like, if at all possible, that we as law enforcement associations be participants in the group with Assemblyman Ohrenschall in an attempt to work this out, because it does have a big impact on us. Thank you.

Chairman Yeager:
Thank you, Mr. Dreher. I am sure Assemblyman Ohrenschall would welcome your participation in any discussions going forward.

Frank W. Cervantes, Director, Washoe County Department of Juvenile Services:
I have not had the opportunity to reach out to Assemblyman Ohrenschall on this bill, and I apologize for that. I just want to echo some of the remarks from my colleagues, in that our system really is designed to screen the store at the front end. In Washoe County, we screen off 80 percent of the misdemeanor cases that come to our office. The nuances between "interview" and "interrogation" can really affect how we relate and how we have relationships with the children that are in our caseloads. I just think that is an important aspect to understand. The provisions that we put in place to protect children are always there. It is a system of complete self-evaluation. I think you have seen a lot of bills and initiatives over the years that have come through to improve juvenile justice. You will see more this year, in fact, so I think we have a system that tries everything in its capacity not to diminish the rights—particularly due process rights—for juveniles who come into our system. Thank you.

Elizabeth B. Florez, Division Director, Washoe County Department of Juvenile Services:
I am a division director with Washoe County Juvenile Services. Again, I echo our apologies that we did not reach out to the sponsor and that is so noted for future bill drafts that come forward. Aside from echoing everything that my counterparts have indicated, we also have a concern about how this may apply, specifically, to our victims of sex trafficking and those children who are arrested for solicitation. We already face a lot of barriers as far as engendering a relationship with these children, to get them to cooperate with us and cooperate with investigations, in order to reveal the sources behind their work. We feel like this would be a barrier to that communication. Thank you.

Chairman Yeager:
Is there anyone else in opposition to A.B. 341 here in Carson City? [There was no one.] Is there anyone in Carson City or in Las Vegas who is neutral on A.B. 341? I do not see anyone in Las Vegas so we will come up here to Carson City.

Ross E. Armstrong, Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services:
We have the tail end of the juvenile justice system, and so our thoughts on this bill may be a little bit different from our counterparts that are earlier in the process. The first section of the bill that allows for the appointment of additional individuals to help these children out I think is really great. When you talk to the children about what worked—What took you from engaging in criminal behavior to getting your life on track?—for so many of them it was just finally having an adult who cares for them, so if the courts have the funding to do that, the more people helping and supporting these children is great.

As far as encouraging the Nevada Supreme Court to adopt rules for juvenile defense, the Governor's Juvenile Justice Commission has been working with the State Bar of Nevada to try to explore options for standards. Other states have standards for juvenile defense work. I think, anecdotally, our system has the biggest issues when we have a private criminal defense attorney who generally practices in adult court, in the adult system, and they come down to the juvenile system and try to treat that case the same way they would in the adult system. What we are really trying to do is make sure when we have people who are not familiar with the juvenile system coming in to represent these children, they are not doing more harm than good by their representation.

We reached out to the bill's sponsor, and I would note that the amendment (Exhibit L) addresses most of those concerns. We did not want the interpretation of "interview" to become so broad that it would create a barrier between our parole officers who are really trying to engage these children and help them out, by clicking on a camera every time they needed to talk to them. I think we are almost there with the current language of the amendment; there are some questions about what "investigatory" means and I will give you an example. If we have a child come in and it is time for their drug test and they take their drug test, it is not unusual for the parole officer to ask how it is going to go, and will the child test clean or test dirty. Does that become something where we need to click on a camera and

get an attorney in there, when really the officer is just kind of building rapport? Because so often the child will say that they are going to test dirty, and that opens up that conversation.

Again, those are our perspectives from our deep end of the system. I would note that because of the definition of "child" in this particular title of NRS, it could apply to anybody up to the age of 20. If they are currently in the jurisdiction of the juvenile court this would apply to those 18-, 19-, and 20-year-olds with open cases. There is some discussion of age and that is something to take into consideration.

Chairman Yeager:
Thank you for your testimony. Is there anyone else in the neutral position on A.B. 341? [There was no one.] Assemblyman Ohrenschall, I would like to invite you and Ms. Roske back up to the table for any concluding remarks on A.B. 341.

Assemblyman Ohrenschall:
Thank you very much, Mr. Chairman, and I want to thank Ms. Roske for copresenting this bill with me. As to some of the comments that were made in terms of the groups that got in touch with me—juvenile probation and the parole officers—that is reflected in the mock-up of the amendment. I tried to address their concerns. If there is more work I can do on that, I certainly look forward to trying to meet with those stakeholders and anybody else. I know things are very busy in the building right now, and I am happy to talk to anybody who is interested in this bill.

As to some of the comments that Ms. Duffy and Mr. Martin made, I certainly have tremendous respect for them and for everything they do. This bill is not taking to task any of the great work they do with children; however, I stand by my belief that, unfortunately, the protections that *In re Gault* extended to children 50 years ago are really hollow here in Nevada. Unless we pass a statute in some form, similar to A.B. 341, similar to what happened in Illinois and Connecticut, that those constitutional rights that our Supreme Court, in an 8 to 1 decision, said extend to children when there is a danger of loss of their liberty are misunderstood and not understood. Children do not understand this waiver.

There was the issue brought up by Mr. Martin when he said there would need to be an attorney present at The Harbor. This is not meant to apply to diversionary programs, and I do not believe it applies to diversionary programs and those children. The amendment is meant to address those concerns and make sure that questions like how are things going at school, how are things going at home, are there drug abuse issues at home, and things that are not related to the investigation, not in interrogation, would not be covered and would not trigger any of the protections here.

I love the model of our juvenile court system and the fact that it is collaborative, and the fact that, as a defense attorney, I work with prosecutors and social workers and I try to connect children with services that can help them. For many of the children Ms. Roske and I have represented, it is the first time that they have a mental health diagnosis on what has been undiagnosed for years. The first-time substance abuse is addressed when they meet with

people like us. It is the first time that homelessness is addressed. A lot of children need but never get IEPs, and that is something wonderful about our juvenile justice system that I would not want to see change. The truth of the matter, however, is that for delinquency offenses, any of these children could be taken out of their home and could end up either at a county correctional camp, at a state youth facility, for anywhere from six months to a year or longer, or perhaps be sent out of state and perhaps be certified up to the adult system, depending on the charges.

The stakes are high, and that is why our U.S. Supreme Court wanted to make sure that children have these protections. Assembly Bill 341 will make sure that children understand the protections that the court gave them. As to whether this would apply to victims, it is my belief that A.B. 341 would only apply to Title 5 of NRS, would only apply to children who are accused of a crime, and would not apply to any potential victims or any other children. Mr. Chairman, with your indulgence I would ask for a little time for Ms. Roske to address some of these points.

Chairman Yeager:
Please go ahead, Ms. Roske, if you would like to make any concluding remarks.

Susan Roske:
I just want to echo Assemblyman Ohrenschall's remarks. The intent of this legislation was to address the children involved. I am sorry, but it is an adversarial process. If the language were amended to put in the word custodial before interrogation to make it clear that is custodial interrogation, I think I can speak for Assemblyman Ohrenschall that we would have no objection. That is the intent of this legislation. There is plenty of case law that defines what a custodial interrogation is and that the police and defense community understand.

I just want to address and clear up an error that was stated. I believe one of the retired police officers testified that records are sealed when children turn 18. That is not accurate. The law has changed several times over the years, but presently juvenile records are sealed at the age of 21 with exceptions. Some of those exceptions we addressed on Monday, when we were talking about juvenile sex offenders and how, even if records are sealed, the law can still go behind them and require people to register as far back as 1956. So not all juvenile records are sealed and they are not sealed at 18, but most are sealed when they turn 21.

I know the philosophy in juvenile court is rehabilitation. It is a very honorable philosophy, but the point is that children are put in jail. They are put in cells, and they sleep in a cement room with a cement bed. It is jail. They are committed to youth institutions. They are taken away from their families, so it is adversarial, and there are serious consequences. Children, based on adjudications of delinquency, can be sent to the adult system and there are other long-term consequences. It could affect their ability to get scholarships. It could affect their entry into college. I have had children tell me they did not get jobs because their employers found out they had juvenile records. There are other consequences that seriously affect these children, and they should understand their rights before they waive them. That is all we are asking.

The argument that these children are going to be taken into juvenile hall and wait for an attorney—well if they stayed and talked to the police officer and confessed to a crime, or admitted to a crime that they did not commit or were given a citation, they would be arrested until they go to court in most cases. The officers, if they have probable cause and they do not want to arrest a child, can give the child a citation and contact the attorneys to come for the interview. There are alternatives to locking children up, and my argument is that they would probably be locked up anyway, even if they went through with the interrogation. I think that is a rather hollow argument.

I would also like to address the comment about sex trafficking victims. Again, this bill is not meant to address victims. If police officers are talking to people being accused, yes it does apply. I just have a hard time weighing a sex trafficking victim also being a perpetrator of an offense that justifies the juvenile justice involvement. If they are talking to a child about being sex trafficked and that is a victimization, then this bill would not apply. If they are prosecuting that child for committing an act of prostitution, then yes, it would apply; that person should be aware of his or her rights before answering questions and how that investigation, and being adjudicated as a delinquent child, is going to impact their custody status.

Assemblyman Ohrenschall:
I do not want to keep us any longer but I would just ask everyone to think about how we thought about the law when we were 16 or 17 years old, how well we understood the *Constitution* and our rights, and imagine being in handcuffs or in a cell. Would you want to make sure that young Mr. Hansen or teenage Mr. Yeager really understood those rights, versus being very scared and just talking because they are scared and there is a person of authority, and they are either in a cell or in handcuffs? If it were any of our children or our nieces or nephews, I believe we would all want them to fully understand their constitutional rights before they made any statements.

Chairman Yeager:
Thank you, Vice Chairman Ohrenschall and Ms. Roske for presenting the bill. We will close the hearing now on A.B. 341. Now would be the time for public comment. Is there any public comment in Las Vegas or Carson City? [There was none.] We will close public comment. Committee members, it has been a long week. We have been here many hours so you have certainly earned your morning off tomorrow morning, and this is a reminder that we will not be having a meeting tomorrow so everyone can sleep in for a few more minutes. The next two weeks are going to be very busy; we have many bills to hear so expect that we will try to start right on time and we may go late on occasion. We are going to start on Monday at 8:30 a.m., so that will give members a chance to fly in on Monday morning, and with respect to the schedule for the next two weeks, we will take that day by day. We are adjourned [at 11:31 a.m.].

RESPECTFULLY SUBMITTED:

Devon Isbell
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE:

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is Proposed Amendment 3332 to Assembly Bill 324, submitted and presented by Assemblyman Edgar Flores, Assembly District No. 28.

Exhibit D is letter in support of Assembly Bill 324 to Chair Yeager and members of the Assembly Committee on Judiciary, dated March 30, 2017, authored and submitted by Leo Murrieta, Founding Chair, Latino Leadership Council.

Exhibit E is a Nevada Supreme Court document entitled, "Report of the Commission to Study Child Support Guideline Review and Reform," dated September 1, 2016, submitted by The Honorable James W. Hardesty, Justice, Supreme Court of Nevada.

Exhibit F is Proposed Amendment 3336 to Assembly Bill 278, submitted and presented by Assemblyman Keith Pickard, Assembly District No. 22.

Exhibit G is a copy of a rule titled, "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs," dated December 20, 2016, submitted by Kimberly M. Surratt, Attorney, representing Nevada Justice Association.

Exhibit H is titled, "Child Support Final Rule Fact Sheets," dated January 5, 2017, submitted by Kimberly M. Surratt, Attorney, representing Nevada Justice Association.

Exhibit I is a document titled, "Compliance Dates for the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule," authored by the Office of Child Support Enforcement, and submitted by Kimberly M. Surratt, Attorney, representing Nevada Justice Association.

Exhibit J is a document titled, "Conceptual Amendment: Assembly Bill 278," submitted by Assemblyman Keith Pickard, Assembly District No. 22.

Exhibit K is a copy of an article from *The Chicago Reporter* titled, "Juveniles in police custody to get more legal protections in Illinois," dated August 2, 2016; by Melissa Sanchez, available at http://chicagoreporter.com/juveniles-in-police-custody-to-get-more-legal-protections-in-illinois/; this copy was submitted by Assemblyman James Ohrenschall, Assembly District No. 12.

Exhibit L is a proposed amendment to Assembly Bill 341, submitted by Assemblyman James Ohrenschall, Assembly District No. 12.