MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-ninth Session
March 8, 2017

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:35 p.m. on Wednesday, March 8, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Don Gustavson
Senator Becky Harris

COMMITTEE MEMBERS ABSENT:

Senator Michael Roberson (Excused)

GUEST LEGISLATORS PRESENT:

Senator Heidi S. Gansert, Senatorial District No. 15

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Eileen Church, Committee Secretary

OTHERS PRESENT:

Brigid Duffy, Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney, Clark County

James Sweetin, Chief Deputy District Attorney, Office of the District Attorney, Clark County
Chuck Callaway, Las Vegas Metropolitan Police Department
John T. Jones, Jr., Nevada District Attorneys Association
Jared Busker, Policy Analyst, Children's Advocacy Alliance
Corey Solferino, Washoe County Sheriff's Office
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Kimberly Mull, Policy Specialist, Nevada Coalition to END Domestic and Sexual Violence
Lise-Lotte Lublin
Benjamin Lublin
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Sean B. Sullivan, Office of the Public Defender, Washoe County
Holly Welborn, American Civil Liberties Union of Nevada
Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General
Jennifer Noble, Nevada District Attorneys Association
Ron Dreher, Peace Officers Research Association of Nevada
Derek Jones, Detective, Street Enforcement Team, Reno Police Department

CHAIR SEGERBLOM:
I will open the hearing of the Senate Committee on Judiciary with Senate Bill (S.B.) 169.

SENATE BILL 169: Revises provisions relating to sexual offenses. (BDR 15-472)

SENATOR HARRIS:
This bill makes several changes to the law in areas related to sex offenses.

Sections 1 and 10 of the bill require the Department of Public Safety (DPS) to establish a statewide tracking system for sexual assault forensic evidence kits, commonly known as rape kits, and allows DPS to contract with appropriate public and/or private entities to create and manage the system. It also sets forth specific requirements the tracking system must meet as follows: to track the location and status of assault kits including the initial forensic medical examination; the receipt by law enforcement and the genetic marker analysis at a forensic lab; to allow appropriate medical and law enforcement entities to track the status of those kits; and to allow a victim to anonymously track the status of his or her kit.

Section 1 also requires DPS to report statistics to the Governor and the Legislature twice a year for the preceding six-month period on the number of kits tested in each county and the State in general, along with other relevant information. Reports containing this information must be provided to a renamed Subcommittee to Review DNA of the Advisory Commission on the Administration of Justice (ACAJ) and be published online.

Section 10 revises the name of the Subcommittee to better reflect its expanded role and adds reviewing these reports to the Subcommittee's duties. It also requires that the Subcommittee report its findings to the full ACAJ.

Sections 2 through 7 expand the prohibition of public disclosure of a sexual assault victim's name to include a victim of sexual conduct committed by employees, volunteers or contractors of various child welfare and juvenile justice entities, as well as the Youth Parole Bureau.

Section 8 provides for the person who is 21 years of age or older and who is licensed to run a foster home or who is employed, contracted or volunteers for a child welfare or juvenile justice entity is guilty of a Category C felony if that person engages in sexual conduct with a person who is between 16 and 21 years of age.

Section 9 is the section that lengthens the statute of limitations on commencing a criminal proceeding for a sexual assault from 20 to 30 years from the date the assault that took place.

Sections 11 and 18 make a special sentence of lifetime supervision a requirement of a person who is convicted of a sex offense as described in section 8.

Sections 12 and 13 require a psychosexual evaluation as part of a presentencing investigation and report for a person who is convicted of a sex offense as described in section 8.

In sections 14, 15, 16 and 19, the same offense as described in section 8 is added to a list of crimes and includes the following provisions: in section 14, notification of the victim and witness when a defendant is released from custody or at final disposition of the case; and section 15 prohibits the sealing of records for a person convicted under these provisions.

Section 16 adds this crime to the definition of a sexual offense requiring the offender to register as a sex offender.

Section 19 adds the crime to those for which the Department of Corrections (DOC) must assess the offender's likelihood to reoffend. The Board of Parole Commissioners must consider that assessment when deciding whether to grant or to revoke the offender's parole.

Yesterday, I learned from the Attorney General that there is a grant that the State of Nevada has received with regard to rape kits testing and tracking. I am working with the Attorney General's Office to ensure we qualify for the grant and figure out what type of a tracking system would be best implemented in the State.

I have also received two letters from Ilse Knecht (Exhibit C) and Natasha Alexenko (Exhibit D) in support of S.B. 169.

CHAIR SEGERBLOM:
If a teacher has sex with a student who is 17 years old, it would not be statutory rape. It would be a felony?

SENATOR HARRIS:
This bill tracks the bill from last Session in which children in any school district in the State that remain in the system until 22 years of age are protected.

CHAIR SEGERBLOM:
The teacher would be listed as a sex offender?

SENATOR HARRIS:
Yes.

SENATOR FORD:
I would like to talk to you further about Assembly Bill 97, which I am working with Assemblywoman Teresa Benitez-Thompson on, and any synergies we might have with that.

ASSEMBLY BILL 97: Revises provisions relating to evidence collected from forensic medical examinations of victims of sexual assault. (BDR 15-538)

BRIGID DUFFY (Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney, Clark County):
About a year and a half ago, a nightmare scenario was brought to my attention with regard to employees of child welfare agencies and juvenile justice agencies engaging in potential sexual relationships with 16- to 21-year-old children under their care, custody and control. When the police department was notified to investigate this crime, if the child informed the officer that he or she consented, it was determined a crime was not committed. We had personnel issues, but we did not have the ability to prosecute the crime.

Our District Attorneys Association amendments (Exhibit E) will address the fact that we want only those individuals who are in positions of authority over these children to be prosecuted. It is not intended to extend to the person who goes and cuts the lawn at a foster care home or works in the kitchen. It is really for those people who have some sort of ability to control that child's life and outcomes on the child's rehabilitation and success into adulthood. It is a situation that we are all aware of and want to fix so that we do not have this happen within in our communities and to our children.

SENATOR CANNIZZARO:
Therefore, my understanding is that 21 years of age would include any children who are in foster care or other child care services. Is that right?

MS. DUFFY:
That is correct. It also extends to children in the juvenile justice system because we have jurisdiction until they are 21 years of age. They could be on youth parole or they could be under the supervision of a probation officer until they are 21 years of age.

SENATOR CANNIZZARO:
The bill as it is written seems a little broad, and maybe I do not understand it correctly. I understand the reason for the 21 years of age for those purposes. Under section 8, subsection 1, paragraphs (b) and (c), it seems that those sections include an employee, volunteer or anyone who is involved with any agency that is providing services to children, which certainly applies to parole and foster care.

My sister runs a leadership camp for kids. Some of the youth staff that work there are over the age of 21, some are a little under, but many of the kids that

go there certainly would fall within this category. The staff members are volunteers at this leadership camp for children, and I worry that we would be capturing some unintended individuals in this.

MS. DUFFY:
In section 8, a person has to be providing specific services. It would not extend to camps at this point. We are talking about Child Haven or Kids Kottage, foster homes in our community, foster homes run for probation and parole, child welfare agencies and supervision of children in our community directly by probation officers.

The District Attorneys Association amendment specifically added language that it has to be someone in a position of authority. The intent of that addition is because there has been some argument made in criminal cases about the right of association and we cannot criminalize every conduct. It has to have that position of authority.

SENATOR CANNIZZARO:
When it says "provides services to children," is there a part in the *Nevada Revised Statutes* (NRS) that defines specifically those types of entities that you are describing? Because "provides services to children" is a little broad. While I agree this is something that we should be concerned with and should be addressing, I am just a little wary of that particular language, "provides services to children." Is there somewhere else in NRS where this is defined?

MS. DUFFY:
In section 8, subsection 3, paragraph (c), the entity that "provides services to children" means a child welfare agency, the Department of Juvenile Justice foster home, which is then defined under the foster home statutes NRS 424, or the Youth Parole Bureau as defined in NRS 62A. That is where we came up with the definition.

SENATOR CANNIZZARO:
In section 2, it talks about individuals who are married to another person. Have there been cases where someone marries the child to avoid prosecution under this statute?

MS. DUFFY:
That addition was added in by the Legislative Counsel Bureau (LCB) as there may be conflicts somewhere else in the law. I defer to their expertise. I had those same concerns that somebody could groom a child for two years and then marry the child to avoid prosecution.

CHAIR SEGERBLOM:
Is there any way to criminalize this behavior without making it a sex crime?

MS. DUFFY:
I do not see a way around it because we are talking about using your position of authority to have sex with children who are in very bad situations.

CHAIR SEGERBLOM:
Some victims could be 20 or 21 years old?

MS. DUFFY:
That is correct.

JAMES SWEETIN (Chief Deputy District Attorney, Office of the District Attorney, Clark County):
I think the conduct this bill is attempting to prohibit sort of tracks, as I believe Senator Harris indicated, with the already established sexual conduct between teacher and student. The Legislature previously recognized conduct significant enough to define an individual as being a sex offender for the purpose of both conditions that might be placed upon the offender in the course of probation or parole as well as later registration and supervision.

CHAIR SEGERBLOM:
That was my concern. I think we went excessively far with that. To me that is not a sex crime by definition. Maybe it could be a sex crime, but it would not be automatic. This tracks the teacher-student relationship?

MR. SWEETIN:
It does.

CHAIR SEGERBLOM:
Even if the students were 20 or 21 years of age?

MR. SWEETIN:
Yes. So long as they are in high school.

CHAIR SEGERBLOM:
There is no constitutional issue about that?

MR. SWEETIN:
The State has an interest in protecting vulnerable parties from sexual advances from those who have unique access to them and are inherently viewed as authority figures. That is the situation that we have here. There is no constitutional violation in regard to protecting that vulnerable class.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
We support S.B. 169. We support the section regarding sex assault kits being tracked and the State setting up a system to do that. We are in the process of trying to test all the kits that are backlogged. We have made a commitment that we are going to get those kits all tested. I think the State tracking and monitoring that time frame would be a good thing.

I was approached about a year ago by a detective in our agency who was frustrated because he had a case where a 16-year-old juvenile was in a facility that provided care to juveniles who were vulnerable. When the juvenile was released, she ran into one of the counselors from the facility and they started having a consensual sexual relationship. When the parents of the now 17-year-old juvenile found out about the relationship, they reported it to law enforcement. Under the current statute, we were unable to take any criminal action against the counselor targeting the 16-year-old who was under his authority.

We also support the amendments to this bill.

CHAIR SEGERBLOM:
Did the relationship start when she was in the facility and then continue when she was released?

MR. CALLAWAY:
My understanding was the sexual relationship happened after the juvenile was released. The 16-year-old child said it was consensual and the relationship did

not start until she was released. At issue was the fact that a short time prior to this, the counselor was in a position of authority over that juvenile.

CHAIR SEGERBLOM:
Mr. Jones, is that the way this bill reads? The relationship started while the juvenile was in custody and then it continued after she was released?

JOHN T. JONES, JR. (Nevada District Attorneys Association):
The way I read the statute is that an individual is in a position of authority and the child is under the care, custody, control or supervision of the entity. I think the child has to be under the care and control while the sexual conduct occurs. In this instance, I do not know that we could pursue charges against that individual.

MR. CALLAWAY:
I still support the bill even though it would not help in that situation.

MR. J. JONES:
Our proposed amendment seeks to make six changes to S.B. 169. The first two changes are to add two sections to this bill that deal with two statutes that are on the books. One is NRS 201.540, which is sexual contact between certain employees of schools or volunteers. We want to add "in a position of authority" to NRS 201.540. We have seen litigation in Clark County regarding this bill and the fact that "in a position of authority" is not in the bill.

CHAIR SEGERBLOM:
The statute just says a teacher having sex with someone is illegal, and you want to make it the teacher having sex with a student is illegal?

MR. J. JONES:
That is correct. What we are seeing in Clark County is freedom-of-association challenges because people over the age of 18 years of age have the freedom to associate with whomever they want.

MR. SWEETIN:
The original intent of this statute, dating back to its inception in the late 1990s, was to protect the class of individuals that would include vulnerable students or younger people who are under the influence of individuals who are authorized to take care of them.

Based on the legislative history and the wording of the statute, our Office has had to support the statute for a number of years. There has been a developing area of law that talks about interpreting statute by looking at the legislative history as well as the face of the statute itself in determining what the intent of the Legislature was. A number of motions have been filed in cases similar to this challenging the constitutionality of the statute.

In order to regulate conduct between individuals who are over the age of 18, you cannot do it in an arbitrary manner. It has to be specifically focused to a specific State interest as I have detailed here.

What the amendments to the statute do is carry forward what has already been delineated as the intent of the statute through the legislative record and puts it in the face of the statute itself. That will certainly assist us in defending the statute and the intent that the Legislature had in imposing this statute.

MR. J. JONES:
We are by no means conceding the fact that someone's association is violated by the statute as currently written, but we are seeking to make the change.

With respect to NRS 201.540 and NRS 201.550, we are seeking to add in "at the time the act is committed" to the provisions that deal with applicability to those who are married to the pupil or student. The way that it is worded now, it sounds like someone commits an act and has charges filed, then gets married to avoid prosecution. We want to clarify that the person has to be married at the time that the act is committed.

In section 1, we want to make some changes to the sexual assault kit reporting. We want to make sure that the provisions do not apply to those victims who have chosen to remain anonymous or have indicated that they are not victims. I believe that comports with the Sexual Assault Kit Working Group that was put together by the Attorney General and others.

In section 8, we are seeking both to add "in a position of authority" and to make clear that the provisions do not apply to those who were married at the time the act was committed to the new statute that Senator Harris is proposing.

We support S.B. 169.

CHAIR SEGERBLOM:
Therefore, as I understand it, if someone was 20 years old, worked in a residential housing or some kind of program, and supervised an 18-year-old female, this would not be illegal. If the person was 21 years old and the female was 20 years old, that would be illegal.

MR. J. JONES:
Yes. You have to be 21 years of age or older for the new section 8 to apply to you.

We would like this to be a sexual offense, but we are willing to work with you on any concerns that you may have.

JARED BUSKER (Policy Analyst, Children's Advocacy Alliance):
We support S.B. 169. We believe that it adds more protections to the most vulnerable children.

CHAIR SEGERBLOM:
Have you seen the amendments?

MR. BUSKER:
We are okay with the amendments.

COREY SOLFERINO (Washoe County Sheriff's Office):
We support S.B. 169 as amended.

I want to give you an update on the submitted rape kits at the Washoe County Sheriff's Office Crime Lab. We have been working with Las Vegas Metropolitan Police Department Crime Lab, the Attorney General's Office and the Federal Bureau of Investigation (FBI) in getting those kits tested. We had approximately 1,100 kits and we submitted 254 sexual assault kits to the FBI. Fifty-seven cases are back resulting in 20 profiles that went into the Combined DNA Index System (CODIS) and we had 8 hits.

CHAIR SEGERBLOM:
You said CODIS; is this tied to what the late Senator Debbie Smith had been pushing all those years?

MR. SOLFERINO:
Yes.

ROBERT ROSHAK (Executive Director, Nevada Sheriffs' and Chiefs' Association):
We support S.B. 169 as amended.

KIMBERLY MULL (Policy Specialist, Nevada Coalition to END Domestic and Sexual Violence):
We represent the domestic and sexual violence programs across the State, and we support S.B. 169 as amended.

LISE-LOTTE LUBLIN:
I support S.B. 169.

I want to explain a little bit about my past and go into why I am here. I was drugged and sexually assaulted over 25 years ago. I was unconscious during the assault, but I can recall everything that happened before I blacked out. The next memory I can recall was waking up at home unaware of how I got there.

Survivors of sexual assault have experienced great loss. Our families endure that loss with us, and the suffering we experience can haunt us throughout our lives. At times, I feel as though I do not have control over the events in my life. I have random thoughts about what may have happened and haunting nightmares that make me sick to my stomach. I cannot imagine how I would feel or how I would cope with the real images of what did happen and how those images could break my spirit or corrupt my self-worth. I struggle often with the idea that I might remember bits or pieces of the assault. In addition, if I do remember, what type of impact would it have on me? I truly will not know the extent of my injuries for years to come. I only learned of my assault three years ago.

I support this bill taking the statute of limitations to 30 years and would love to see the number abolished eventually over time, but I think 30 years is a great number.

My husband and I initiated A.B. No. 212 of the 78th Session and changed the limitations from 4 to 20 years. Again, 20 years is not long enough for a victim to heal from the damage that has been done. It is barely enough time to acknowledge the trauma that we may experience.

Extending the law gives us a chance to seek the justice that is so important to healing, but it must be done when the survivor is ready.

BENJAMIN LUBLIN:
I support S.B. 169. The most common misconception is that a victim of sexual assault and rape is willing to come forward right away within minutes after the attack. Unfortunately, that is not true. We have to understand that some victims are in disbelief, ashamed, scared, paranoid and at times suicidal. According to the Department of Justice, only 344 out of every 1,000 sexual assaults are reported to police. That means two out three go unreported.

From 2005 to 2010, victims of sexually violent crimes gave the following reasons for not reporting the assaults: 20 percent feared retaliation; 13 percent believed the police would do nothing; 13 percent believed that it was a personal matter; 8 percent reported it to a different official; 8 percent believed it was not important enough to report; 7 percent did not want to get the perpetrator in trouble; 30 percent gave another reason or did not cite a reason.

On January 23, 2014, Bart Bareither, a 39-year-old computer engineer, walked into the Marion County Sheriff's Department in Indianapolis and confessed to raping a nursing student 9 years earlier while he was a teaching assistant in the Indiana University.

Jenny Wendt, who had been 26 years old at the time of the assault, had not originally reported the crime because she thought it would be difficult to prove since she had been on dates with the assailant. Even though Bareither confessed to the rape of Jenny Wendt, no charges were filed due to the statute of limitations.

Back in 2015, the Senate wanted to extend the statute of limitations for sexual assault to 30 years, but unfortunately due to time constraints A.B. No. 212 of the 78th Session was unable to be changed. Today, I am asking you to give victims the much-needed time to come forward.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):
Section 1 of S.B. 169 dealing with the testing of sexual assault or forensic evidence kits is a good part of legislation that will indeed help victims of sexual assault achieve justice in a timely manner. However, the rest of S.B. 169 is

neither good law nor good policy. Thus, we must oppose this bill. I have submitted my written testimony (Exhibit F).

When we talk about the new crime outlined in this bill, the crime that will create a Category C felony, it is important to talk about, without a doubt, that consensual sexual encounters can be criminal. However, they should not always require registration and lifetime supervision unless it can be definitively said that there was a serious imbalance of authority where someone truly had no choice and his or her will was overborne. In those cases, we do not have crimes on the books that will prosecute those individuals with some of the strongest penalties.

CHAIR SEGERBLOM:
What crime would that be?

MR. PIRO:
Lewdness with a minor is a ten-to-life crime. Statutory sexual seduction is also a crime.

CHAIR SEGERBLOM:
What about the 17-, 18-, 19- or 20-year-olds? Is there a current crime that would not be outrageous sexual conduct that would be illegal?

MR. PIRO:
Not to my knowledge. There is a concern that with the broadening of this bill and the broadening of the language, you could potentially run into a situation where a 21-year-old is working or volunteering at an agency and he has sex with an 18-year-old who is adult for all intents and purposes under the law, and now he is a sex offender.

CHAIR SEGERBLOM:
Is there a crime that would not be a sex offense?

MR. PIRO:
I do not know.

CHAIR SEGERBLOM:
I really hate to have those people commit one offense and be labeled sex criminals for the rest of their lives.

MR. PIRO:
Those are our concerns as well.

The "position of authority" language that the Nevada District Attorneys Association proposes was removed from the bill last Session, so I am wondering why it is coming back this Session. I think that is language that could be interpreted too broadly, and I think that is why it was removed.

The District Attorney's Office should have to put forward case numbers representing the freedom-of-association defense to substantiate whether it is a pervasive problem in Clark County. It was put forward in one case and that person was convicted.

The bill and amendments as written are too broad and will cover too many people.

SEAN B. SULLIVAN (Office of the Public Defender, Washoe County):
The Washoe County Public Defender's Office does agree with section 1 and we do think that is a good thing to have the sex assault forensic kits tested to negate the backlog. We cannot abide by increasing the statute of limitations for sex assault from 20 years to 30 years.

We do have the same issues that Mr. Piro spoke about in section 8 because it is too broad. We also think that there is room to work with all stakeholders concerned. At this time, the Washoe County Public Defender's Office opposes S.B. 169.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
We also agree with section 1 of S.B. 169.

We also favor section 1, subsection 2, paragraph (c), which allows victims to track and receive updates about the location of their kits throughout the process. That is a good safeguard for the privacy rights of individuals.

We are concerned about section 8 creating a Category C offense as far as the 18- to 21-year-olds engaging in a consensual sexual act with someone that they might be under the control of. We understand the intent behind that, but if we look at this as a scenario, we would be subjecting certain individuals potentially 21-year-olds, 22-year-olds and up to Category C offenses and having to be on

the sex offender registry for a certain period of time. That is disproportionate to those acts, especially when we are talking about the brain development of children. It is well established that when we are talking about the criminal context, young peoples' brains are not fully developed until they are 25 years old. We are putting that criminal liability on someone, let us say a 21-year-old, who has a sexual encounter with a 19-year-old in these different settings, perhaps in a foster home or a social work setting. We are talking about people who have the same types of impulses when we are talking about people of that age.

Finally, I want to point out when it comes to appeals, criminalization and appealing these different cases in different states, it is not likely to be held up on appeal if an individual engages in a sexual act with someone 18 or older because that someone is of the age of majority. The case I refer to is *Paschal v. State*, 2012 Ark. 127, 10-11, 388 S.W. 3d 429, 435 (2012), where the court held it is necessary that the bill state "in a position of trust or authority" language in order to hold up. It also states that the fundamental rights to privacy implicit in our law protects all private, consensual, noncommercial acts of sexual intimacy between adults. I do not think this will hold up in court on appeal if it pertains to 18- to 21-year-olds.

SENATOR HARRIS:
I have had an opportunity to meet with the public defenders as well as the ACLU regarding their concerns. I have not had enough time to draft additional language.

CHAIR SEGERBLOM:
Seeing no more people wanting to testify, I will close the hearing on S.B. 169 and open the hearing on S.B. 214.

SENATE BILL 214: Revises provisions relating to crimes against children and human trafficking. (BDR 15-891)

SENATOR HEIDI S. GANSERT (Senatorial District No. 15):
Human trafficking is a plague that permeates all regions of the globe, including Nevada. It is an organized and violent crime that exploits women of all ages, including children with an average age of entry into prostitution a mere 13 years old.

The 2014 Las Vegas Sex Trafficking Study, which was a collaboration between Las Vegas Metropolitan Police Department (LVMPD) and Arizona State University (ASU), found that almost 65 percent of the cases studied, which was a 1-year snapshot, involved minors with ages ranging from 12 to 17 years old.

Ten years ago in 2007 when I was in the State Assembly, one of the pieces of legislation I passed was A.B. No. 72 of the 74th Session. That legislation strengthened child-luring statutes, allowing police to prosecute those who solicited children online. At that time, predators were just starting to solicit children online. In the LVMPD and ASU study, social media and online recruitment was used in nearly one of every three incidents of sex trafficking. Its use is highly prevalent in the solicitation of minors. We must protect children and make the penalties very high for those who exploit them.

Right now, if you solicit a minor, there are graduated penalties. For the first offense, it is a Category E felony; for a second offense, it is a Category D; and for a third offense, it is a Category C. What this bill would do, if someone was to solicit a child who is less than 14 years of age, that person would be prosecuted under the sex trafficking statute NRS 201.300. It is a much stiffer penalty, but again these children are under the age of 14.

Section 4 of the bill also adds human trafficking to NRS 49.2544 that assures that advocates for victims will not be compelled to testify. This legislation is important because of the age of the children.

CHAIR SEGERBLOM:
You said it is a much more serious crime, but what is the actual penalty?

SENATOR GANSERT:
Category A, which is life with a minimum of 15 years.

BRETT KANDT (Chief Deputy Attorney General, Office of the Attorney General):
On behalf of Attorney General Adam Laxalt, I am here to express our support for S.B. 214. We believe that the under-14 age range that is identified in this bill is an especially vulnerable population to predators and deserving of special protection due to that vulnerability. We would note that in various other criminal statutes such as the luring statute that Senator Gansert referred to, the lewdness statute and the sexual assault statute, the Legislature has already

recognized different thresholds and different penalties for that especially vulnerable population and that age range.

CHAIR SEGERBLOM:
Therefore, solicitation means just that. It does not mean they necessarily agreed to go into prostitution, it just means that you ask someone under 14 if they want to go into prostitution?

MR. KANDT:
Solicitation means you are soliciting somebody for a commercial sex act.

CHAIR SEGERBLOM:
If I were a john and I go over to somebody who is 13 years old and ask her to have sex with me for money, then I am a Category A felon?

MR. KANDT:
Under what is proposed in S.B. 214, I think it is important to note this is the statute that focuses on the demand side, which is the problem. That is why we have commercial sex rings operating that are trafficking victims because of the demand side. Looking at the demand side, what are commonly referred to as johns, if they solicit a commercial sex act currently, it provides that if the individual that is solicited or would be participating in the sex act is a minor, there are graduated penalties. It starts out as a Category E, moves to a Category D for a second offense and then a Category C that is nonprobationable for a third or subsequent offense. That would remain the same under this proposal if the victim being trafficked is between the ages of 14 and 17. This proposal looks at the especially vulnerable population under the age of 14 and proposes, from a policy standpoint, that you consider having penalties proportionate to sex trafficking.

CHAIR SEGERBLOM:
Do the perpetrators have to know the children were under 14?

MR. KANDT:
No. There is no knowingly element in the solicitation statute. It is a strict liability crime when it comes to the age of the victim. There is no mistake of age as a defense. That would be the case under the proposal that is before you today.

JENNIFER NOBLE (Nevada District Attorneys Association):
We support Senate Bill 214. This bill is designed to recognize the particularly heinous nature of soliciting children in this age range.

MR. CALLAWAY:
We support S.B. 214.

RON DREHER (Peace Officers Research Association of Nevada):
We support S.B. 214.

MR. ROSHAK:
We support S.B. 214.

MR. SOLFERINO:
We support S.B. 214.

MR. BUSKER:
We support S.B. 214 and the proposed amendments by the Nevada Coalition to END Domestic and Sexual Violence.

MS. MULL:
We support the victim advocate protection of S.B. 214. We think that the under-14 section, with the buyers being represented as traffickers or involved in the trafficking cycle for prosecution, should be the same as the federal definition, which is under 18.

In 2007, I became aware of the term "human trafficking." I instantly became involved with the movement in my local area and eventually decided to leave my career in real estate and go back to school, as I wanted to become more equipped to help victims of trafficking.

In 2013, I moved to Oklahoma City and began working on the street level with women and children who were being trafficked, some as young as 9 years old. I then started working with the victim services unit of the attorney general's office helping write legislation pertaining to nonresidential services for victims of sex trafficking within that state.

In 2015, I moved to Washington, D.C., and became the policy intern for Shared Hope International, which is the leading policy organization for domestic minor

sex trafficking in the Country. I also had an opportunity to lobby and advocate on behalf of Senator John Cornyn's bill, the Justice for Victims of Trafficking Act, which passed in 2015.

I am a survivor of domestic minor sex trafficking. I was trafficked beginning at the age of 11 years, which started as a child pornography ring and then eventually turned into something more sinister.

Through the last several years, I have connected with over 400 victims, most of whom are still being trafficked. The majority of them started before the age of 18. They did not choose to do this; it is usually a parent or someone who leads you into that lifestyle. The average age is 13 to 14 years old. We want to be sure that those populations are served as well.

I have heard a couple of people refer to the 14-year mark as an age-of-consent issue. Commercial sexual exploitation of a child is not a consent issue. You do not consent to being abused. If you are 17 years old and someone is paying you or a pimp to have sex with you, you are not consenting to that. You are being abused and a victim.

The commercial sexual exploitation of a child is child abuse. People purchasing children for sex deliberately or carelessly have little fear of prosecution. These are not 18-year-old boys who are paying to have sex with 16-year-old girls. The average age for a person or a john purchasing sex with my friends and the people that I know is 42.5 years old.

The federal Trafficking Victims Protection Act of 2000 recognizes that there is no such thing as a child prostitute. The demand fuels the supply for traffickers. The federal legislation carries heavy penalties for buyers, but it is federal law. We have to do something in the State that also offers those same deterrents to get buyers to understand that this is not something we believe should happen to our children. We think that our children in Nevada are worth more than this.

If the State does not have strong laws, buyers are lightly punished, if at all. Purchasing sex with a 17-year-old under federal law is a felony and has a 10-year minimum prison term and up to a $250,000 fine.

Studies show that 80 percent of men would be deterred from purchasing sex with children if they knew they would face jail time. Ninety percent would be

deterred if they were forced to register as sex offenders. Ninety-nine percent of the buyers who purchased children are male, with an average age of 42.5 years. A little over 8 percent are teachers or school employees, 5 percent are first responders such as police or firefighters, and a little over 1 percent are leaders and members of leadership within the faith community.

We support S.B. 214. Buyers of children should be prosecuted for sex trafficking. They should be held accountable. We want all children in Nevada to be protected. We want all abusers of children to be held accountable just like they are under the federal laws, just like under the United Nations recommendations and just like in the states of Louisiana, Texas, Tennessee, Illinois, Washington and others that recognize the victims of sex trafficking under the age of 18.

We have submitted an amendment (Exhibit G), as we feel very passionate about recognizing that every child under the age of 18 is vulnerable.

CHAIR SEGERBLOM:
I have a hypothetical question. If I send an email to someone I did not know who was 13 years old and asked if the person would have sex with me for $100, under this bill, is that a Class A felony?

MR. PIRO:
Yes.

MR. SULLIVAN:
The Washoe County and Clark County Public Defender's Offices are opposed to S.B. 214 for a number of reasons.

First, we do not want to diminish the plight of those children and victims who are forced into the underworld of sex trafficking and have to endure such atrocities. However, the punishment here needs to take a measured approach and it must fit the crime. This legislative measure would greatly elevate the punishment for a person who unknowingly solicits a child under the age of 14 to a life sentence with a minimum parole eligibility release at 15 years. Moreover, there is no guarantee that the offender would even be paroled at the 15-year mark from the Department of Corrections and, in fact, it could be much longer than 15 years under certain circumstances.

To be clear, the NRS already has a number of crimes that would capture this type of activity, as is the intent of this bill, and would sufficiently punish those who attempt to solicit a minor for sex. For example, attempted sex assault of a minor under the age of 14, which is what this bill aims at, would carry a minimum mandatory sentence of 2 to 20 years in the Department of Corrections per NRS 193.330. If the person actually did engage in sex with a minor under the age of 14, that carries one of the harshest penalties under Nevada law, even more so than some murder penalties with a minimum mandatory term of 35 years to life per NRS 200.366.

Lewdness with a minor under the age of 14 carries a minimum of 10 years to life in the Department of Corrections. If this legislation passes as drafted, a person who merely solicits a minor for sex would be facing a much harsher penalty than a person who actually engages in lewd or lascivious behavior with a minor. Clearly, this should not be the legislative intent of this body. Lewdness with a minor is contained in NRS 201.230.

The legislative history of A.B. No. 67 of the 77th Session dealing with sex trafficking reveals that this legislative body wanted to enact laws that harshly punished the true bad actors involved in sex trafficking, such as the pimps, the traffickers and the purveyors. At the very least, there was some discussion by this legislative body that would reasonably suggest such liability might not be appropriate for the ordinary solicitation-type crimes.

During the creation of this legislation in A.B. No. 67 of the 77th Session, a more graduated penalty scheme for solicitation was proposed instead of including a life sentence for a third offense for solicitation of a child.

It is critical to note that neither a reasonable mistake of age nor consent would be considered a defense to the solicitation of a child. There is a widespread belief that because prostitution is legal in certain parts of Nevada, it is not difficult to imagine an example or a situation where a tourist might solicit a child under the age of 14 if he or she reasonably believed the child was much older, only to end up facing a potential life sentence in prison.

Concerning the argument that this legislative body needs to address the demand side of solicitation of prostitution, there could be a much more measured approach that would incorporate a graduated penalty scheme for these bad

actors that continue to engage in subsequent offenses for the solicitation of a child versus facing a life sentence in prison upon a first offense.

For all these reasons, the Washoe County Public Defender's Office and the Clark County Public Defender's Office respectfully oppose S.B. 214.

Concerning section 4 of the bill, and proponents' remarks, we would oppose not having a victim advocate testify for constitutional grounds as a potential violation of 5th and 6th Amendment rights. Inconsistent testimony by a victim given to a victim's advocate and made aware of by the district attorney should be disclosed to the defense. If necessary, the victim advocate may be called to testify about the alleged victim's inconsistent statements. This might be litigated in court notwithstanding the existing law that may provide for a confidential communication. We firmly believe that the judges would be in the best position to rule as to whether confidential communication privileges between the victim and the victim's advocate should apply.

MR. PIRO:
Senate Bill 214 is problematic because it removes the *mens rea* or intent element that is central to our system of criminal justice. As public defenders, we are uniquely positioned not only to understand the necessity of an adequately protective *mens rea* requirement, but also to witness the practical effects of its erosion each day.

Common law crimes and the Model Penal Code require a union of a bad act and a guilty mind or intent. This union of an accused having an "evil-meaning mind with an evil-doing hand" was recognized by the United States Supreme Court in the case *Morissette v. United States*, 342 U.S. 246 (1952), because intent is so inherent in the idea of an offense which flows from our society's commitment to individual choice. Therefore, a defendant must know the facts that make his conduct illegal.

This law seeks to make solicitation, which is a misdemeanor under Nevada law, and solicitation of a minor, which is already punishable by a graduated penalty scheme, into a crime carrying a penalty of 15 to life. This bill is worded such that it would capture people intending to do one crime, a lesser crime, and now make it impossible to offer any defense to this crime.

In our Country's history, we have long gone by the framework that it is unjust to punish without proof of criminal intent. Crimes that remove the intent from the *mens rea* element endanger the innocent. *Mens rea* remains important because we are creating so many new crimes under Nevada law.

Prosecutors understandably prefer the discretion to use criminal statutes lacking a *mens rea* so that they can "get the bad guys." They justify the lack of *mens rea* by arguing that otherwise they may not be able to convict those "bad guys," while assuring us that they will not use strict liability offenses against the innocent. It is the jury or the judge's job to determine who has or has not committed a bad act with a *mens rea*. This law would remove that power from the jury or the judge to even consider that element.

We are not saying that crime is okay, nor is anybody saying that sex trafficking is okay. What we are seeking is recognition that the fundamental principle stating that ignorance of the law should not excuse a crime rests on the assumption that the law is knowable.

It is this body's responsibility to provide the *mens rea* written in the law, especially given the gravity of this offense. For that reason, we oppose this bill as written.

CHAIR SEGERBLOM:
It seems to have a Category A felony that does not require intent is unusual.

MR. PIRO:
With overcriminalization becoming an issue from the 1970s, many laws have been put on the books that do not intimate a *mens rea* requirement. That is why there is a big push in the federal system to correct the laws, and I think we need to be careful when we construct laws to ensure that there is a *mens rea* requirement and that we are not removing it and making crimes strict liability crimes. Some courts may indeed read *mens rea* into the statute when the legislative history is unclear, but I believe from the record made by the proponents of this bill, it is indeed their intent to make this a strict liability crime.

DEREK JONES (Detective, Street Enforcement Team, Reno Police Department):
This is a situation that we see in Washoe County. One case that I can offer for your consideration is a few years ago we placed an online ad advertising a

15- and a 13-year-old for sex. We received well over 200 responses to that ad. It was then whittled down to several who we felt were then taking the steps to want to actually complete a prostitution act with either the 13-year-old or the 15-year-old. Ultimately, we had one man show up to the designated place. I posed as the undercover father of the supposed 13- and 15-year-olds. I accepted $150 from this man to go upstairs and have sex with who purported to be my 13-year-old daughter. This does happen in Washoe County as well as Clark County.

CHAIR SEGERBLOM:
Just for the record, you actually testified that the girl was 13 or under 14?

MR. D. JONES:
In that case, yes. The ad said that I had a 15-year-old daughter as well as a 13-year-old daughter. The different responses showed which one they were interested in.

CHAIR SEGERBLOM:
There was not an actual 13-year-old victim that was solicited. Would that fall under this crime? No one seems to know the answer.

SENATOR GANSERT:
I believe the answer to the last question is yes. This is solicitation of a minor who is 13.

CHAIR SEGERBLOM:
Would the child have to be a minor? In that scenario, there was no 13-year-old.

SENATOR GANSERT:
This was under solicitation, under the luring statute. Yes, because the person knowingly solicited.

MR. J. JONES:
We had this same issue with the luring statute, but it has to say the intent for it to cover situations where the person is not 13 years of age. If this statute said, "attempt to solicit," then that situation would be covered.

CHAIR SEGERBLOM:
This bill does not say "attempt," so that would not be covered?

MR. J. JONES:
Under this statute, correct.

CHAIR SEGERBLOM:
That is the concern that I have. If you put an ad out there for a 13-year-old and people respond, that would not fall under this situation?

MR. J. JONES:
That is correct. If you amend in the word "attempt" and you attempt to solicit a child under the age of 14, then that scenario would be covered.

SENATOR GANSERT:
As has been mentioned a number of times, we have a demand issue for the solicitation. The under-14 solicitation is a particularly heinous crime and that is why we are asking for stiffer penalties. In some of the opposition's testimony, they talked about where attempted sexual assault, sex with a minor or lewdness had much stiffer penalties for under 14, and this is aligned with that. The statute already has strict liability; we are not adding strict liability.

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CHAIR SEGERBLOM:
If there is no more testimony on this bill nor any public comment, I will close the hearing on S.B. 214 at 2:57 p.m.

RESPECTFULLY SUBMITTED:

Eileen Church,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	8		Attendance Roster
S.B. 169	C	3	Ilse Knecht	Written Testimony
S.B. 169	D	3	Natasha Alexenko	Written Testimony
S.B. 169	E	11	Bridget Duffy	Nevada District Attorneys Association Amendments
S.B. 169	F	3	John Piro	Written Testimony
S.B. 214	G	1	Kimberly Mull	Nevada Coalition to END Domestic and Sexual Violence Proposed Amendment