

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eightieth Session  
March 28, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:11 a.m. on Thursday, March 28, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconference 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/80th2019](http://www.leg.state.nv.us/App/NELIS/REL/80th2019).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Steve Yeager, Chairman  
Assemblywoman Lesley E. Cohen, Vice Chairwoman  
Assemblywoman Sheaf Backus  
Assemblyman Skip Daly  
Assemblyman Chris Edwards  
Assemblyman Ozzie Fumo  
Assemblywoman Alexis Hansen  
Assemblywoman Lisa Krasner  
Assemblywoman Brittney Miller  
Assemblywoman Rochelle T. Nguyen  
Assemblywoman Sarah Peters  
Assemblyman Tom Roberts  
Assemblywoman Jill Tolles  
Assemblywoman Selena Torres  
Assemblyman Howard Watts

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman William McCurdy II, Assembly District No. 6

**STAFF MEMBERS PRESENT:**

Diane C. Thornton, Committee Policy Analyst  
Bradley A. Wilkinson, Committee Counsel  
Traci Dory, Committee Secretary  
Melissa Loomis, Committee Assistant

**OTHERS PRESENT:**

Michelle Feldman, State Campaigns Director, Innocence Project  
Kaitlyn Herndon, Private Citizen, Las Vegas, Nevada  
DeMarlo Berry, Private Citizen, Las Vegas, Nevada  
Aaron D. Ford, Attorney General  
Jesus Carbajal, Private Citizen, Las Vegas, Nevada  
Michael Cherry, Private Citizen, Las Vegas, Nevada  
Jim Sullivan, representing Culinary Workers Union, Local 226  
Tanja Brown, Private Citizen, Carson City, Nevada  
Megan Ortiz, Intern, American Civil Liberties Union of Nevada  
Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice  
Jackie Lawrence, Private Citizen, Las Vegas, Nevada  
Kristina Wildeveld, Attorney; and representing Nevada Attorneys for Criminal Justice  
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada  
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office  
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office  
Jennifer P. Noble, Chief Appellate Deputy, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association  
Michael Large, Deputy District Attorney, Washoe County District Attorney's Office

**Chairman Yeager:**

[Roll was called, and Committee protocol was explained.] Just to let Committee members and members of the public know, we intend to take the bills in order as they are listed on the agenda. [Assemblywoman Cohen assumed the Chair.]

**Vice Chairwoman Cohen:**

I will open the hearing on Assembly Bill 267, which provides compensation to certain persons who were wrongfully convicted.

**Assembly Bill 267: Provides compensation to certain persons who were wrongfully convicted. (BDR 3-657)**

**Assemblyman Steve Yeager, Assembly District No. 9:**

It is my honor to present Assembly Bill 267 to you this morning. Assembly Bill 267 recognizes that the American criminal justice system, while the best justice system in the world, is not perfect. Although rare, disastrous mistakes happen sometimes in our criminal justice system. When disastrous mistakes happen that result in wrongful conviction and subsequent incarceration, sometimes for decades, we as a state have an obligation to compensate those who were wrongfully convicted and incarcerated.

This is an issue I started thinking about way back in 2014, when I first ran for office; unsuccessfully I might add. I was in Michigan, visiting my mother, when I read an article in the local newspaper about a Michigan legislator who was advancing legislation to provide compensation for exonerated persons. It made me wonder why we did not have something like that in Nevada. Since then, we have had additional exonerations in Nevada. You will hear about those a little bit later today. Leading up to this legislative session, numerous people reached out to me to inquire about Nevada enacting legislation to compensate exonerees. I am pleased to be able to sponsor this legislation as it is time for Nevada to join many other states in righting wrongs to the extent possible.

Please allow me to take you through the provisions of the bill, the amendments, and turn it over to the other individuals at the table with me. First, I do want to note that there are two amendments on the Nevada Electronic Legislative Information System. One is from the Innocence Project ([Exhibit C](#)). That amendment is friendly, and I will go over what that amendment does. The second one is from the Nevada District Attorneys Association ([Exhibit D](#)). I do not consider that a friendly amendment at this time.

Section 2 of the bill authorizes the filing of a civil action to seek compensation. The applicant has to prove, by a preponderance of the evidence, that he or she was convicted of a felony and spent time in prison or on probation. In addition, the person would have to prove one of the following: (1) The judgment of conviction was reversed or vacated and the person was not retried; (2) the court ordered a new trial and the person was found not guilty at the new trial or the person was not retried; or (3) the person was pardoned on the grounds that he or she was innocent.

In addition, section 2 indicates that the applicant cannot have committed perjury, fabricated evidence, or by his or her own conduct caused the felony conviction. Section 2 of the bill also specifies factors that the court will look at when deciding one of these lawsuits. It also specifies that a court can appoint an attorney to a petitioner to assist with the case. Finally, section 2 specifies that a false confession or a guilty plea does not bar a petitioner from winning the civil suit.

Section 3 of the bill indicates that if a petitioner is successful, the court must enter a certificate of innocence and immediately order the records related to the case to be sealed.

Section 4 indicates that the state is waiving its typical \$100,000 cap on damages for a lawsuit against the state.

Section 5 indicates that you do not get a jury trial for this kind of case. It is a trial simply in front of a judge, but the decision of the judge can be appealed.

Section 6 specifies that there is a two-year statute of limitations on bringing a claim. It also specifies that any claim that now exists must be brought by October 1, 2021.

Section 7 specifies how much financial compensation a successful petitioner will receive as well as other reentry services and attorney's fees. Section 7 also states that you do not get compensation if you were serving time for another offense. This has to be the only offense you were serving time or on probation for.

Section 8 is an offset provision that indicates that any compensation awarded under this statute is offset by any previous monetary judgment or settlement. Simply stated, you cannot double dip. If you bring a suit later and win, you have to reimburse the state for any monies paid out under this bill.

The Innocence Project amendment ([Exhibit C](#)) removes the requirement that there must have been new exculpatory evidence that led to the exoneration because, as you will hear, the exculpatory evidence that leads to the exoneration may not, in fact, be new evidence. So that requirement did not really make sense in the context of what we were trying to do.

Importantly, the amendment also requires that the petitioner prove he or she did not commit the crime and was not an accessory or accomplice to the crime. This is a very important provision because what that essentially indicates is it is not enough that your conviction was reversed or overturned or that you were not retried; the petitioner has to prove to the court by a preponderance of the evidence that he or she did not participate in the crime, either directly or as an accomplice. You do not deserve money if you cannot prove that you were not at all involved in the crime.

The amendment ([Exhibit C](#)) also makes it abundantly clear that the state is waiving its liability cap. Finally, the amendment makes clear that the amount of attorney's fees that could be awarded is not to be offset from the amount awarded to the petitioner. So the attorney's fees are in addition to the compensation to the petitioner.

I am pleased to have a few people with me today who have worked on this issue for quite some time and would like to testify as part of the presentation of the bill.

Kaitlyn Herndon is a college student at Washington University in St. Louis. She feels so strongly about this bill that she traveled here yesterday to be with us in person this morning. Last year, she was in high school in Las Vegas, and she clerked for Justice Kristina Pickering of the Nevada Supreme Court. She did quite a bit of research on what other states have been doing in this area, and she really is a subject matter expert. I also want to recognize that

Justice Pickering as well as former Justice Michael Cherry, are with us today at the Grant Sawyer State Office Building in Las Vegas. They both wanted to be here today, but obligations prevented that from happening. I am not sure if they are going to testify, but I have been authorized to let the Committee know that they are supportive of A.B. 267.

We also have Michelle Feldman from the Innocence Project. You might remember that Ms. Feldman testified by phone on the recording confessions bill that we heard earlier in the session. She has worked on this issue around the country. Directly behind me is DeMarco Berry, who was incarcerated wrongfully in our state for more than 20 years. His wife, Odilia, is with him as well. He may be able to share his story with you or answer some questions today.

There are certainly others behind me in this room and in Las Vegas who would like to testify as well, but at this time with your permission, Vice Chairwoman Cohen, I would like to hand the presentation over to either Ms. Herndon or Ms. Feldman. I will vacate the table and allow Mr. Berry to come forward. After everyone has a chance to weigh in, I am happy to answer any questions.

**Michelle Feldman, State Campaigns Director, Innocence Project:**

We are a national organization that works to exonerate the wrongfully convicted. We work with our local partners here in Nevada and the Rocky Mountain Innocence Center on policies that prevent and address wrongful conviction.

DeMarco Berry was a client of the Rocky Mountain Innocence Center. Nevada is one of only 17 states in the country without a law to compensate wrongfully convicted people after they are exonerated. Mr. Berry spent 23 years in prison for a crime he did not commit. At the time of the crime, he was only 19 years old, living in Las Vegas, and walking to a Carl's Jr. to get something to eat. He could not even get in the restaurant because there was a robbery happening. The person committing that robbery killed the store manager and ran away. Mr. Berry was at the wrong place at the wrong time. He was facing the death penalty. He was convicted of robbery and murder, and he had two life sentences. Luckily, he did not get the death penalty.

Not only did Mr. Berry lose over two decades of his life, but he lost financial opportunities, the ability to build a career, to save money, and to obtain assets. His wife, Odilia, is really the unsung hero in this story. They grew up together, were together when he was wrongfully convicted, and she stood by him throughout his incarceration. She had to pay so much money for lawyers, for prison calls, and prison visits. So the state took away his freedom for over 20 years and took away his ability to make a living.

When he was exonerated in 2017, the Clark County District Attorney's Office had established a conviction review unit. They took the case and they found that there was compelling evidence of his innocence. The actual perpetrator had gone on to confess to the murder which was corroborated by associates of the actual perpetrator at the time. There was also a jailhouse informant who had claimed that DeMarco confessed to him. He recanted

indicating that he had made it up so that his charges would be dismissed. Based on that, the Clark County District Attorney's Office dismissed the charges. Mr. Berry was released on June 27, 2017.

The Department of Corrections did not tell his attorneys or his family and left him alone in downtown Las Vegas. The state has not given him anything since that last ride home. He is an ambitious person; he works as a truck driver to make ends meet. But that means that he cannot spend time with his family that he has already been deprived of for over two decades. He would actually be eligible for more services from the state had he been guilty. It is part of repairing the wrongful conviction and helping the exonerated person recover and get back on his feet. There is no amount of money that will ever make up for losing 23 years of your life, but at least the state can do the right thing now and help him build a future.

Just to give you a national picture overview: there are currently 33 states that have compensation laws. The federal government and Washington, D.C., also have compensation laws. The majority of the states provide at least \$50,000 for each year that an innocent person was wrongfully incarcerated. A number of states provide even more. Colorado provides \$70,000 for every year, Texas provides \$80,000 for every year, and Washington, D.C., gives \$200,000 for every year. More than half of those states provide nonmonetary services such as reentry services, tuition assistance, health care, and counseling.

Without a law here in Nevada, the only option for an exonerated person to get any justice is to file a lawsuit against the municipality and/or the state that allegedly violated the exoneree's civil rights. These cases take a very long time to resolve. They do not get exonerees help when they need it the most—when they just get out. They are very difficult to prevail on because the exonerees have to show that there was intentional misconduct and that the government violated their rights intentionally, which is a very high burden. If they end up getting a settlement or an award, it is usually at least ten years down the line. That costs taxpayers a lot more money, paying the cost of litigating these cases, and they end up paying a lot more typically when the civil case is resolved.

This bill is really a better deal for the exoneree, and it is a better deal for taxpayers. There is a fixed payment for each year that the innocent person was in prison so it would be a minimum of \$50,000 for each year. There is a straightforward process for obtaining compensation. The exoneree would file a claim in district court, the judge would see if the criteria were met, including that they were actually innocent, and then they can get payments. Another really important part is that the court would enter a certificate of innocence finding and it would provide automatic expungement.

Mr. Berry has been exonerated for two years, and he still has to carry around a piece of paper that shows the court's decision to dismiss the charges. When he gets pulled over as a truck driver and he is put in the system, his name still comes up as having been in prison for murder. The indignities have continued, and Assemblyman Yeager spoke about the offset provision which is really the protection for taxpayers that Ohio and Kansas recently adopted. Even though the state compensation would likely be paid to the exoneree first and then down

the line, if they win a civil award, they would have to reimburse the state for the difference and vice versa. If the exonerees first got a civil award or settlement and then applied for state compensation, they would only be entitled to the amount of state compensation after the civil payments were subtracted. That is the taxpayer protection that we have in there.

I really want to thank Assemblyman Yeager for introducing this bill and thank so many of you for signing onto it. It would be one of the strongest laws in the country. That is the benefit of having so many other states pass this type of law. We know what works and what does not work, so I think this bill really strikes a good balance and it also does the right thing. Yesterday was the first day that anybody in the state of Nevada had ever apologized to Mr. Berry for what happened. He said, You do not have to apologize. You have an opportunity to do the right thing now—that is what is important.

**Kaitlyn Herndon, Private Citizen, Las Vegas, Nevada:**

Assembly Bill 267 was something for me that began this past summer when I was clerking with Justice Pickering. We were catching up and she suggested that I look into DeMarco Berry's case: It is something incredibly profound and so complex, and you need to know every piece of what went wrong throughout the entire thing. That began my first few days of going back and researching, reading all of the appellate stuff—literally everything that went into this process—and realizing the depth of error that happened and how long it went on for. Subsequently, she asked me to look into what Nevada had available to him and to people in similar positions. It was not very easy to find out that we did not have anything comparable, anything that could actually remediate the wrong at this time.

Ultimately, I relied on the Innocence Project's extremely in-depth website to go through and find all 35 statutes and read all of them, see what worked, what did not work, what the plausibility was, and what the impact would be of implementing a compensation plan as well as reentry services. What we realized is that so many states have already made such headway in apologizing for such an incredible wrong. It was very easy to find pieces that were extremely well-suited to Nevada. I spoke with Assemblyman Yeager, and he asked for all of this research. We settled on Colorado, Ohio, Hawaii, Kansas, and Utah as very comparable and similar states on which to base our legislation. Hawaii, I think it is worth mentioning, has a preamble that acknowledges the fact that people like DeMarco Berry are in an extremely unique situation as a different kind of victim of crime. The depth of that uniqueness is something that we cannot ignore and we have to apologize and do better.

I am looking at everyone in this room and am starstruck because of the power that is available here; the resources that are available here is something so profound to me and something that we can actually use to do the right thing and to move forward from this. I think it is important to note that reentry services by the Department of Corrections are so much better for people who are rightfully convicted. They are asking for reuniting families, for providing housing, allowing for health care and mental health services. Those programs are optional/mandatory and very much facility-specific. The depth of those programs is far more than anything available to people who walk out of prison free men and are just dropped off on the street without any of those resources.

Getting to meet DeMarco and Odilia yesterday was so important; both of them are just the most wonderful people. I truly feel lucky to have even spent a couple of hours speaking with them. Something that really struck me was the depth of their faith in being reunited; I think that is something we need to mimic here—the depth of our faith and our ability to do the right thing now, to move forward, and to correct something that is in a large part just everyone's slight failing in a way that we could not avoid. I do not think it is a problem to say that our system is flawed, to say that we as people are able to make a lot of errors in a way that is really important to others. But we are able to do better and we are able to move forward to correct and reevaluate. That will only make us stronger and more worthy of having citizens like DeMarco and Odilia who deserve better from us.

**Assemblyman Fumo:**

I want to apologize, too, on behalf of the State of Nevada, for what happened to you. As I heard your story, I sat there in muted anguish and was brought to tears. I cannot imagine what it is like to not see the sun, feel the air, or touch a loved one for 23 years. I do not even want you to address that. What I would like you to talk about to this Committee is what it was like when you got out, having to explain where you were for the last 23 years, and what you had to go through in order to even get your job. What do you go through on a daily basis?

**DeMarco Berry, Private Citizen, Las Vegas, Nevada:**

Everybody is familiar with the Bible, right? Lazarus. It felt like coming back from the dead. For half of my life, it was like I am in a coffin, but I am living. You are just waiting to die. To me, that is what it felt like. A rebirth. That is the best way I could put it.

**Assemblyman Fumo:**

What was it like, after you got out, to find that job, to get an apartment, to go back home, and to reintroduce yourself to your friends and family?

**DeMarco Berry:**

It is difficult because you are disenfranchised from your family. You really do not know each other. You have been away from each other for so long. You have to basically adapt on the dime, because your family does not know you, and you do not really know them. You have to learn how to take away the ice that you had around your heart because you have to be emotionless in prison, as that is something that could be used against you. Feelings where you have empathy towards someone like hurt, or an individual feels sadness, you do not know how to relate to it because you are so disenfranchised with your feelings. Your feelings have become numb. You have to learn how to try to understand how they feel but you do not really understand why they are sad or why they have the emotions that they feel.

As far as the homes, everybody asks for a background check to get a home. When they run your background and they see murder and robbery even though it says dismissed, it really does not matter because it is there. The stigma is still put on you. They do not want to be liable if something does happen. They feel like they would be liable for that; an open door for them to be sued. Work is somewhat the same experience. They will look at you and say



the charges were dismissed but it is not really acknowledging that you are not guilty of the crime. That does not really matter; it is on your record. The odds are really against you. No matter how many times you tell them that you did not do it, they are like, Well, you did something. It is difficult, but anything is better than being in prison.

**Assemblywoman Miller:**

First of all, hearing that you have to carry your freedom papers in 2019—like we are living in a northern state 200 years ago—breaks me. I apologize for that. I cannot hide my emotions like my colleague. We are honored to have you here and hope and pray that you are just the first of many people who we are able to exonerate. In that word I hear the word "honor." For your family, I would love to be in a room with all of you and just talk and talk and talk. I see so much light from you. There is not one of us in this room who tolerates being accused of something we did not do, specifically myself. You talked about having to put ice around yourself to protect yourself. I think time moves slowly in the Legislature—it is almost a dead stop when you are incarcerated. My real question is, Can you share with us what got you through, how you maintained hope, and held on to your soul while at the same time fighting for your honor and freedom?

**DeMarco Berry:**

First, I would like to say my wife. When you are in a situation like that, they try to strip you of your humanity, your dignity, and your pride. I used to always think to myself that just because we are human, does not really make us human. My outlook on it was that I wanted to become the best human that I could possibly be even though it is a bad circumstance. With that in mind, I did not allow too many things to allow me to forget who I am. In that process you can forget who you are and become something else. I wanted to become a better human being, so that is what I strove for—to be the best person I could possibly be even though it is a bad circumstance. Just because they say you are this, does not mean you are. That is how I pushed forward.

**Assemblywoman Miller:**

What would you like to do for the world?

**DeMarco Berry:**

It may sound cliché, but I would like for everybody to realize that we are all human. We are human; everybody makes mistakes but at the same time, do not take it away from him. We need one another; we just sometimes forget it.

**Assemblywoman Torres:**

I echo the sentiments of my colleagues. It is extremely difficult for us to understand your experience and additionally, I think that it is so evident that we as a community did wrong. I know that you have touched on it a little bit, but I was wondering if you could explain just a little bit more some of the impacts of having that pop up on a background check and just some of the things you have had to go through as a result of having this charge still appear.

**DeMarco Berry:**

It is crazy. At nighttime, you get pulled over, it is like a dark alleyway. When I get pulled over, I have to turn on all the lights in the car, roll down all of the windows, give them my information, and when I give them my information, I put my hands out the window. When they go to their car and they do the background check, I am looking through the rearview mirror watching them. While I am watching them, they look, they hit the computer again, and they look at the computer again. So I am already seeing that they are trying to figure out what is this; these charges and how I am here. I immediately get my paper out and as soon as they come back to the car, I just hand them the paper. They look at the paper and look over it, look at me, look over it again, because they are stunned. They do not know what to do from that point on. They just tell me to go because they really do not know what to say after that point. What can you say? That is what I go through if I get pulled over. It is more fear out of not knowing how they are going to react to the situation. So the first thing I do is put my hands over the window so that they can see your hands in plain sight.

**Assemblywoman Torres:**

Thank you, Mr. Berry. I just want to reiterate how honored we are to have you come and testify on this piece of legislation. I think it is clearly evident that we have something that we need to do in our state. We really appreciate you for coming to tell what I am sure is a rather difficult story to tell.

**Assemblywoman Krasner:**

Thank you, Mr. Berry, for being here to share your story. It is heartbreaking and I know you do not want our pity. I know that is not why you are here, and I am sorry that I am a little emotional. Thank you to your wife. What a wonderful person you are to stand beside him. Is this bill that we are bringing going to help you? I need to know that we are going to be able to help you with this and it is just not going to be for people going forward. I need to know we are going to be able to do something for you. I think we have the best justice system in the world, too, but it is not perfect, as Chairman Yeager said. I need to know this is going to help you, and maybe you could tell me how it will help you?

**DeMarco Berry:**

Everybody says it will help me, but I am really not concerned about me. I am going to work either way it goes. I am more concerned about the individuals that are after me. They are going to need this. It is really difficult and they are really going to need it. I am more concerned about them. I am not really concerned with me. I am going to work regardless. I am going to find a job and do whatever I have to do. Everybody does not know how to handle the situation in the right manner, so it would be better if they have at least some kind of way to go forward. That is the most important part.

**Assemblywoman Krasner:**

I appreciate your saying that. You are a hardworking man, obviously. You are like a hero to so many people. I think I am going to have to ask somebody else. Is this going to help Mr. Berry?

**Michelle Feldman:**

Yes. If the bill is enacted and becomes effective, there is a two-year period for exonerees who were exonerated before the effective date to then file for compensation. So it would help Mr. Berry. I know that Mr. Berry is very humble, but he cuts hair and his dream is to go to barber school and he does not have the money to do that right now. I think this could help him achieve that dream.

**Assemblyman Watts:**

Thank you, Mr. Berry, for coming to share your story. I want to echo some of the things that my colleagues have said and apologize on behalf of the state for what happened to you. I hope that we can make it better. One of the things that we are hoping to be able to do with this bill is help people to be able to get back on their feet and pursue their dreams. I was just wondering if you had anything to add now that you have been out for a little bit. What are some of the things that you would like to do if you could get this weight off your shoulders in terms of things you would like to learn, what would you like to do as a job, and what are some of the opportunities that you would like to see if you did not have this over your head?

**DeMarco Berry:**

I would like to go to barber school. It is something that I love doing. That is it, just go to barber school and enjoy what I do.

**Vice Chairwoman Cohen:**

Mr. Berry, when you get your barbershop, because I am sure you will, I hope you will let us know so we can all come and support you there.

**Assemblywoman Hansen:**

I appreciate you meeting with me yesterday. You were the topic of conversation all evening with my husband. When we are here, we are asked, Why did you run for office? People are always intrigued why you would run for office. This is why. This is an opportunity to do the right thing.

I find it ironic. Ms. Herndon, I do not mean to reveal your age, but when you are young, you do not mind saying your age. I think if you were just in high school, you must be close to 19 or 20.

**Kaitlyn Herndon:**

I am actually a junior, but I am only 21.

**Assemblywoman Hansen:**

The optics that this young woman has really taken on this cause at around the age that you were when you were incarcerated—the irony is not lost. I am curious whether a pardon is possible in this scenario. If not, why?

**Michelle Feldman:**

Pardons work differently in every state and I do not know the specifics of the law in Nevada. It is really hard to obtain a pardon and it tends to be pretty political because it is the Governor who issues it. At this point, I do not know. The charges were already dismissed so I do not know if a pardon is possible. The certificate of innocence in this bill would really go a long way because of the expungement provisions and because he can finally clear his name. It requires clearing out this conviction from law enforcement's records that is continuing to haunt him.

**Assemblywoman Hansen:**

I, too, am a great fan of our law enforcement and of our criminal justice system, but nothing is perfect. As the daughter of a district attorney, this breaks my heart. We just have to own it and do better. I see this as a way of doing that. I just want to give credit, when we take a vow for better or worse, sickness and health, your wonderful wife is the embodiment of that. I appreciate that example. Mr. Berry, your example of forgiveness, of not being bitter, and using this in a positive way, is quite an example to all of us. I appreciate your coming here. It is not easy. You have done some really hard things. I hope that we can make this right.

**Assemblyman Edwards:**

I would just like to say that in the three terms I have been here, I think you have been probably one of the most dignified and impressive witnesses we have had. You wanted to be a better man—I think you have achieved it. Keep doing what you are doing. I wish you the best of success.

**Vice Chairwoman Cohen:**

We really do appreciate your coming here today. I hope for the best for all of the exonerees, and I am ashamed that we have exonerees who have been put through this.

**Assemblyman Roberts:**

There is definitely no question as to whether we need to do this or not. It just comes down to how. If the state is named as the claimant, does that let the local jurisdiction or anyone else who was involved in the wrongful conviction off the hook since there is still the ability for the exonerated person to receive remedy from them based on this bill?

**Assemblyman Yeager:**

It would not so much let them off the hook. If they have already successfully won a suit, which would likely be against the state and also the county where it was prosecuted, there is that offset provision so they would not be able to receive compensation twice. If an individual receives compensation under this bill, the bill does not preclude them from also bringing a suit against the state or the local government as an entity of the state, but any monies that were recovered would essentially have to be paid back to the state. I know that is a bit circular, but my hope is that we have set the amounts in the bill at a rate where someone would make a decision and say, This is fair and this is adequate—and not decide to take advantage of this bill and then bring a suit. But the bill does not expressly preclude someone from doing that.

**Assemblyman Roberts:**

Could the local jurisdictions—obviously that is how the person got there—be conjoined in the suit? This procedure would only apply to filing suit against the state, so they could not also draw in the local jurisdiction under this bill?

**Assemblyman Yeager:**

I am not 100 percent sure on that. I think at least the intent of the bill is that when making the determination of who would have to pay, you are right, most of these are prosecuted by county prosecutors. We do have the Office of the Attorney General that could be the prosecutor acting expressly on behalf of the state. That might be an area in which we need a little bit more clarity and it looks as though Ms. Feldman probably can answer that.

**Michelle Feldman:**

It would just be the state that would have to pay; it would not be the county or the municipality. The way that the federal lawsuit that exonerees now have to file because there is not a law, that is typically against state actors—the state crime lab or the state police—and it could also be against the municipality. Interestingly, prosecutors have absolute immunity; constitutionally they cannot be civilly sued for misconduct. It is on the state; the responsibility will be on the state. However, the idea is that the exoneree will get these immediate payments from the state and, in the long run, if there is a real claim of federal civil rights violations and they can prove the intentional misconduct, it will be the municipalities if they were named in the suit that would pay out. Then the exoneree would reimburse the state. That is how we have framed it so there can be accountability on all sides.

**Assemblyman Roberts:**

Thank you. My real concern is that someone would stop here and not go further and then we would never fix the problem that got the person there to begin with. That is really the root of the challenge. Compensation is definitely important, but we need to fix that which put them there to begin with and correct that.

**Assemblywoman Backus:**

This is probably one of my favorite bills all session, and I want to make it the best bill we can make. When I was going through this, as a civil defense attorney, I read it from the perspective of how I would unfortunately stand on the other side to challenge some issues raised in this bill so that we do not have any loopholes and we can make it as successful as possible. The one thing that was missing is, we definitely need to add the section regarding allowing people to pursue claims. I noticed that it was not in there or in the amendment ([Exhibit C](#)). The other thing was the waiver of the cap applied to governments probably needs to go into the waiver with this immunity under section 4. I think right now the proposal is with the statutory damages and the thing I never want is a judge sitting over here saying someone is not entitled to other reimbursement of costs because they met the \$100,000 cap, or whatever that cap may be in the future, based on the time that they served.

I thought there was some confusion with section 6, subsection 1, paragraph (b). I get nervous with a statute of limitations being one of those things that is a surefire bar to any claim—and

in paragraph (b) there is no real concrete date and it says "the person was not retried." What I am learning in this Committee is sometimes you may get charged with something and sometimes it dillydallies for a long time and you are not charged. Unfortunately, in Mr. Berry's situation, he was charged with murder and we do not have a statute of limitations, which means it is open-ended in those situations. When does that date start just so that no one loses their right?

I think what was imperative that Mr. Berry talked about was reunifying with his family. Under section 7, subsection 2, paragraph (b), subparagraph (4), the bill provides counseling services for the person, but what about also including immediate family? Having some sort of reunification counseling is just so imperative, and I would not want to lose out on helping someone's family who was having a hard time with this. In section 8, I thought there needed to be a slam dunk point in which the suit that may be brought in this situation does not constitute *res judicata* for any civil rights suit. I see that there is a lot of language regarding the offset, but I think it needs to be abundantly clear that an individual should have the right to bring that civil rights suit and also bring this suit.

So my question is really simple on the pardon aspect. Can you do a pardon but still be guilty? I just did not understand that language.

**Assemblyman Yeager:**

Thank you for the wonderful suggestions, and I think they are all fantastic. I would like to make this bill as strong as possible. With respect to your question, I do not know that any of us at the table are experts on pardons. Ms. Wildeveld is in the audience today and I think she is going to testify. She has done extensive pardon work, so I will defer that question to her as I do not want to give misinformation.

**Assemblywoman Backus:**

I obviously want to be a co-sponsor on the bill if that is possible.

**Assemblyman Yeager:**

Anyone who would like to be a co-sponsor, just let me know and I am happy to add you.

**Assemblyman Fumo:**

If a person is found factually innocent, sometimes the district attorney's office will say, You have a choice now, Mr. Defendant. We will appeal this and you are going to stay in prison until the appeal process is over, or you can plead guilty to a lesser charge and get out today. They are given this unacceptable choice and I see in the bill that even if they plead to a misdemeanor, they are not precluded from bringing the lawsuit later even if they are given that despicable choice. Is that correct?

**Assemblyman Yeager:**

You are absolutely correct. A guilty plea at any point throughout does not preclude someone from bringing one of these cases. Keep in mind that the standard is preponderance of the evidence and they have to prove by that standard that they in fact did not commit the crime or

were part of the crime. Unfortunately, as you indicated, we live in a society where sometimes people are given very difficult choices. We have a couple of those examples in Nevada, but our intent would not be to preclude compensation if someone can meet the standard of actually being innocent. Neither a false confession nor a guilty plea would preclude them from getting compensation under this statute.

**Assemblywoman Peters:**

I have a question about the amendment ([Exhibit C](#)). I am not a lawyer so I am really asking out of naiveté, but when we are talking about what could be used as additional information, I want to make sure that it is inclusive of existing evidence that has been or can be processed using newly available techniques and technologies. Is there a process to request that evidence is reprocessed and if not, maybe we need to address that so there can be a process to do that?

**Michelle Feldman:**

That is a great transition to our next bill, which is going to address that very issue of bringing claims based on new, non-DNA evidence. I think our amendments really address the concern that you raised. I think it was probably a drafting error. The claim does not have to be new exculpatory information because we have had exonerations where it will because the state illegally withheld evidence of the person's innocence or the defense attorney failed to present and investigate evidence of the person's innocence that was available at the time of their conviction—that technically would not be new. That is why we made that amendment that clarifies that you have to have your conviction vacated and dismissed or, if it is vacated and then the prosecutor wants to retry it, you were found not guilty. Actually, I think that addresses Assemblywoman Backus's question about the time limits. It would come in when the charges are dismissed and the prosecutor says, I am not going to re-prosecute you. At that point you would get two years to file and if you are retried and you are found not guilty, that is when the two-year time limit would kick in. We also added that provision to say you have to have proof that you did not commit the crime or associated offenses. That takes care of the innocence piece. The amendment really addresses your concern.

**Assemblywoman Peters:**

I am wondering about the process. If the prosecutor had some evidence processed through historic technology and we have advanced technology today, who would pay for that? How do we ensure that that process is occurring so that if we have new technologies, that historic evidence is being processed to ensure that we do not have people who are convicted wrongfully?

**Michelle Feldman:**

That is a really good question. The post-conviction DNA testing law is one mechanism where it sets out who pays for it. If you are an indigent defendant, the state pays; otherwise the petitioner pays for DNA testing. In most cases where we are talking about new technology or outdated technology, it is really junk science cases that the evidence that we thought showed a person's guilt was actually undermined by new science. That is going to come up a lot in Assemblyman McCurdy's bill and we will talk more about it.

**Assemblywoman Miller:**

Chairman Yeager, I would like to acknowledge the work that went into this bill and modeling from other states and best practices. You covered a lot of ground with this bill. I was the director of a prisoner reentry program back in Michigan, and one of the things we learned quickly was that many individuals come out of prison with only the clothes on their backs, and have the expenses of—not everyone is fortunate enough to have families capable and willing and waiting for them—clothes to toiletries and bedding to the basic necessities. When I am looking at the amount of money that someone would be awarded that can easily be for someone who is literally starting at ground zero—I know here in Nevada we do not have an income tax—however, individuals would be subject to a federal tax. My concern is that, if this is identified as income or as an award or bonus, it could be taxed at 42 percent.

**Michelle Feldman:**

That is a great question and luckily we have passed federal legislation that exempts any state compensation from federal income taxes. Washington, D.C., has taken care of that.

**Assemblywoman Miller:**

That is a great answer and way better than I expected.

**Assemblywoman Tolles:**

I have to say that I am shocked and surprised that this was not already in place. Mr. and Mrs. Berry, I am so moved by your grace and your bond of love. It is very inspirational, and you are using your story to not just advocate for yourselves but for others. That is truly the highest form of advocacy and change. I really appreciate it so much. Ms. Feldman, it is nice to have an expert be able to tell us about the other 33 states that have enacted this and we can certainly learn how that has worked in those other states. Could you just give us a comparison of those 33 states and what the evidentiary standard is in those states?

**Michelle Feldman:**

There are six states that have a preponderance of evidence standard. Those are really the most recent laws that have passed. A number of states have clear and convincing evidence, which is the highest standard. That has made it extremely difficult for people to get compensated, which is why the most recent statutes—Kansas in 2017 and Minnesota in 2014—use the preponderance of evidence standard. Already the petitioner has the high burden of showing that they did not commit the crime and that means you have to bring affirmative proof of innocence, which is really hard to do. Think about where you were on this day that you did not commit this crime. Do you have the receipts for that day? It is a hard thing to find evidence that proves you were innocent. It basically means that you need to bring evidence that you could not have done this crime. There is a video of me at this store and not at the crime scene at the very time this crime occurred or, in Mr. Berry's case, the actual perpetrator confesses to the crime and that is corroborated by associates of the actual perpetrator who said he did confess to me at that time. Preponderance of the evidence is really a fair standard. Some states go even lower and just show you did not commit the crime.



**Assemblywoman Tolles:**

I do not expect you to have these statistics in front of you, but I would love to know, in those other states, how many people this has helped. If you have that and you could share that with the Committee, I think that would be beneficial.

**Michelle Feldman:**

It is really varied based on when the state enacted the statute. Unfortunately, a lot of the earlier states have had some provisions that do not help a lot of people and are very restrictive. That is the benefit for Nevada; you were not the first to do this but you have 33 other states to look at and to know what went right and what did not. I know in neighboring Utah there were two people exonerated under the factual innocence law there, which we will talk about more, and they were compensated. There were a couple of DNA exonerees who were compensated, but it really depends on how big the state population is and how dedicated they are to overturning wrongful convictions. Surprisingly, Texas has been a leader in wrongful conviction reform and they have made a concerted effort to review wrongful conviction cases so they have a greater number of exonerations than other states. It has helped so many exonerees there. It makes a huge difference in helping exonerees recover.

**Assemblywoman Tolles:**

That last statement sparked a brainstorm. Do we have committees to examine wrongful convictions? Is that something that other states have or is that something our state has that is dedicated to looking through this issue?

**Michelle Feldman:**

You are asking the perfect question for our next bill. Just to give a brief overview, there is one conviction review unit in the Clark County District Attorney's Office. They have established that unit dedicated to looking at possible wrongful conviction cases, doing a re-investigation, and seeing if there is an innocence claim. That is how Mr. Berry was exonerated, but that is the only one in the entire state. We will talk a lot more about that in the next bill, but outside of Clark County there is really nothing, not even a law so that you can present your claim. We will go into more detail about that on the next bill.

**Assemblywoman Hansen:**

Does Texas use the preponderance of evidence or the clear and convincing standard?

**Michelle Feldman:**

It uses preponderance of the evidence, and it probably has the strongest law. Not only do you get \$80,000 for each year that you were wrongfully incarcerated, you get an \$80,000 annuity which means you get that \$80,000 for the rest of your life. If Texas—being the reddest of the red states—can do that, it is pretty incredible. It is something that has really been a model for others.

**Assemblywoman Hansen:**

And they have the death penalty, so I found that they really are making an effort to do that review process. Would you elaborate why, with Mr. Berry, the perpetrator who confessed did so when Mr. Berry had been incarcerated for 17 years, but he was not released until after 21 years? Could you explain to us why there was an additional horrific four years?

**Michelle Feldman:**

That is really the topic of the factual innocence bill. Basically, in Nevada you have two years after your conviction to present new, non-DNA evidence, and after that there is no way to get back into court with purely new evidence. You have to bring a constitutional claim. Mr. Berry had that pure new evidence of a real perpetrator confessing plus the jailhouse informant recanting which together is pretty strong new evidence of somebody's innocence. The only options his attorney had were to shoehorn that into a constitutional claim, which really was not applicable. The district court dismissed the claim. The state had motioned for the court to dismiss it and they did. Mr. Berry's attorneys appealed to the Nevada Supreme Court, and they ordered that the district court had to at least have an evidentiary hearing—you cannot just dismiss this claim. At that point, the conviction review unit which had been set up in 2016 took the case and reviewed it. If it would have happened in another county, he would probably still be in prison. There would be no way to present that claim, and he did spend another four years in prison after the actual person who committed the crime said that he did it. It was a horrible thing for him and his family, and it does not make sense for taxpayers either—they paid for four years to keep an innocent person in prison.

**Vice Chairwoman Cohen:**

What is the purpose of the bench trial as opposed to allowing the litigant to decide if he or she wants a jury trial?

**Michelle Feldman:**

We actually did it because—and most states do it this way—of jury bias, unfortunately. We have had the experience in other states where we found that the judge is really the better person to make that decision. There can be a misunderstanding by juries and bias by juries.

**Vice Chairwoman Cohen:**

Section 2, subsection 4, where an attorney can be appointed to assist the wrongfully convicted in their suit—what kind of attorney is that going to be? We have wonderful public defenders, but they are not civil attorneys. A public defender might not be the best person to represent the wrongfully convicted in what is essentially a civil case.

**Michelle Feldman:**

The judge would decide who is the appropriate attorney to deal with the case, the role of the attorney would be, because there is a straightforward process—unlike having to build a civil case—they would basically collect the evidence to show that this case was dismissed, this is the new evidence, or this is the evidence that shows the person did not commit the crime. They are basically just filling in the application showing how each eligibility requirement was met and then the judge would take it from there. This law is really modeled on Kansas's

most recent law. The Kansas law is modeled on the New Jersey law which is from 1997, so we have some good history there about how it worked. Very few of them are actually litigated and argued about because it is a pretty straightforward process; if the person does not present all of these criteria up front, it is not going to move forward. Of course, they can appeal that, but it should be a pretty straightforward process and not a super complicated case. Again, the judge would decide who the appropriate counsel should be.

**Vice Chairwoman Cohen:**

I am also wondering about the piece about the wrongfully convicted cannot also be in jail or prison for another charge. Could you explain that a little more?

**Assemblyman Yeager:**

That preclusion is simply for getting compensation and the idea there is if you committed some other crime and you were serving time already, you should not be entitled to compensation just because you are serving time for two crimes at the same time. If the legitimate sentence expired and you still spent time in prison or on probation, you would be entitled to the compensation, but we essentially do not want that situation where someone is there for another reason that is legitimate. We made the decision that that is probably not appropriate for compensation, although I think the next bill that we are going to hear probably talks about a way to get at that underlying conviction if you were factually innocent. You just would not be eligible for compensation if you were serving time for something else.

**Vice Chairwoman Cohen:**

Thank you. I wanted to make sure we did not have someone serving a year for one crime that they were guilty of and then 20 more years for a crime they were not guilty of and not being able to get compensation.

**Assemblywoman Torres:**

What if you commit a crime, get sent to jail, and then somebody accuses you and they have what they consider evidence for another crime, so you are convicted of that crime and more time is added on to that first sentence? Would you now no longer be eligible for that even though they are two separate crimes?

**Assemblyman Yeager:**

The simplest way I can say it is, if you serve any time in prison or on probation solely for a crime you were wrongfully convicted of, you are going to be eligible for compensation. In your scenario, you are maybe innocent and something else happens down the road and there is a period of time where you are in for two crimes. The way this bill reads now, you would not be eligible if any of those convictions are legitimate, but either on the front or back, when the other sentence has not begun or is expired, you would still be eligible for compensation.

**Vice Chairwoman Cohen:**

Are there any further questions from Committee members? [There were none.] I will open it up for support testimony on A.B. 267. We have two other important bills today so I would

ask that people in support do try to be brief. "Me toos" and "dittos" are good testimony; we want to make sure that everyone gets a chance to speak.

**Aaron D. Ford, Attorney General:**

I heard some conversations about Texas and have a quick story for you. In 2006, my cousin, Craig Watkins, was running for district attorney. He was a criminal defense attorney, the first to be elected in Dallas. He gets elected and institutes the very first criminal integrity unit in Dallas County. He begins running DNA tests and testing former convictions. Dozens of people are exonerated under Craig Watkins' criminal integrity unit in Dallas. Fast-forward to 2013, and I am a freshman Senator. I have an idea to institute a conviction integrity unit requirement in every county of our state. It was too expensive. I called Clark County District Attorney Steve Wolfson and asked if he would do it voluntarily. He said yes. He begins the process of creating the conviction integrity unit that a few years later examines Mr. Berry's case. Fast-forward to two years ago—I am walking out of my office and what do I see? I see a lot of cameras in our conference room with a man and a woman standing beside him being interviewed and I asked my people, What is going on in that room? They say it is DeMarco Berry. He just got released because the conviction integrity unit found him innocent. I had never met him, did not know him, but walking down the hall from my office, I see him. I walk in and get to hug him. I get to talk to him and explain to him how appreciative I was of the fact that the conviction integrity unit that District Attorney Wolfson set up at my behest was able to lead to his exoneration and release.

Yesterday I got to see him again in my office and talk about his experiences over the last two years. You have heard of this experience and the difficulties in getting a job, getting housing, and getting dignity and respect from the individuals he has to interact with. You have heard me say this before: at the Office of the Attorney General, our job is justice. And justice sometimes reveals itself in circumstances just like this, for someone who has been wrongfully convicted through a system that is, in fact, the best in the world but is still fallible.

I strongly encourage you to support this bill. Chairman Yeager, I cannot thank you enough for bringing it forward. It is a step in the right direction, and it is one that, while it will not repair the experiences that they have had over the last 23 years, it gives them an opportunity to move forward together in a way that allows them to provide for themselves and their family. It is a token and it is only a token, make no mistake about it. Please vote yes.

**Jesus Carbajal, Private Citizen, Las Vegas, Nevada:**

Before I start, I do want to say that I am sorry to Mr. and Mrs. Berry and anyone here or in Carson City that was wrongfully accused and served time in prison. I was actually the lucky one; I did not serve time in prison. I was just charged. Hopefully with this bill, I could actually be able to expunge my record. Last week I spoke about my story briefly, but today I am going to be a little more detailed and do it as fast as I can so everyone else can share their stories as well.

On August 9, 2018, I was pulled out of my home by sound grenades with Las Vegas Metropolitan Police Department (Metro) and for roughly two hours while my house was being flipped upside down, an officer asked me what I did that Tuesday. I told him that I am a supervisor for a company that works for Amazon; I supervise 40 drivers, wake up at 4 a.m., feed my rescue German shepherds, and then I go to work. He immediately gave me a smirk and told me that he was charging me with impersonating a police officer, along with multiple counts of assault with a deadly weapon, and multiple counts of sexual assault. I laughed and said that the DNA is going to clear me because I am innocent and need to go back to work.

They took me in my underwear to Clark County Detention Center. The following day, my face was blasted nationwide—you can still Google my name right now and you would see my mugshot—and the damages that were done to me. Everyone turned their back on me. That same day, I called my employer and I had already lost my job because everyone saw me on television. Amazon had published an article in the PennySaver where if you had about \$10,000, you would be able to become your own business owner. I was in the process of doing that and even had people investing in me to do that. All that went down the drain.

When I went to court, the district attorney had nothing on me. They tried to say that my investigator was tampering with the witnesses. They failed to realize that he had been a Metro detective for 23 years; he gave his credentials and he had a female private investigator that went with him. Also, the key information from the female who was assaulted that Tuesday proved that I was not the gentleman due to the size that I am versus the size he is. He is about 5' 7" and 190 pounds. I was 6' 2" and 280 pounds at that time. They went to the judge's chamber for about 20 minutes to provide additional information proving I was innocent. Even after that, the district attorney tried to give me a pretty high bail and would have kept going if the judge had not stopped him.

I was released on house arrest, and after that I Googled my name every single day. I saw all the craziness on social media. I tried to file for unemployment even after the owner of my company told me he was going to rehire me because he knew I was innocent; instead, he used those articles against me. I won the case but still had to deal with the humiliation of having to deal with that. A little bit down the line we discovered that there was information hidden that proved even more that I was innocent. We do not know if it came from the district attorney or Metro—it was from the main victim who was with this individual for four days. There was a communication on August 1 that they had a six-pack that was one-sided. What I mean by that, the victim stated that it was a dark-skinned Latino mixed with Filipino or light African-American. I was the only one in the lineup who matched that description. Everyone else was of Mexican descent; they were lighter; I was the only who had a beard and mustache. They just did not match the description that these females were telling these investigators. The main victim stated she was 100 percent sure it was not me.

Ever since then, I took it upon myself to clear my name. I want to help. I was with the Mass Liberation Project and the American Civil Liberties Union. Just like Mr. Berry said, I recently got pulled over, and I had my hands all the way out because the officer came with his hand on his firearm and told me, You have a big rap sheet. I want to be able to expunge

my record. I was left with nothing. I was not even given an apology. All I have now is credit that is shot, and I owe attorney's fees. I just want to be able to have the support, as someone who is innocent, to get back on my feet. I am hoping that this bill will pass and just for someone who was not convicted like myself to at least be able to expunge my record. I have tried to seal it, but you can still run my background and see it.

**Michael Cherry, Private Citizen, Las Vegas, Nevada:**

As a former chief justice of the Nevada Supreme Court, it is a nightmare to think that our state has convicted innocent people and deprived them of liberty, sometimes for decades, like Mr. Berry. This legislation would ensure that our justice system can correct wrongful convictions when there is new evidence of innocence, and that exonerated Nevadans are compensated for the years taken from them.

As Chief Justice of the Nevada Supreme Court, it was a privilege to work with the Legislature on improving our legal system. Together with people like Assemblyman Yeager, we made progress on indigent defense, fair sentencing, and other aspects of criminal justice. However, our state must do better on issues of wrongful conviction. In the last few years, a number of wrongful convictions have come to light, and our state must be able to correct its mistakes and ensure that innocent people get justice.

I was a criminal defense attorney for 28 years. I served on the district court bench in Clark County for 8 years. I was a Supreme Court justice for 12 years. I remember being a criminal defense attorney. I was not afraid of the district attorney's office or any judge that I ever appeared before. I was not even afraid of the devil himself, but I was afraid that I would lose a case because the person was innocent and still got convicted and sent to prison. I spent a lot of sleepless nights, and it is a terrible burden on the person convicted as was Mr. Berry.

I just want to say briefly on A.B. 267, it provides a fair amount of compensation for each year that an innocent person lost behind bars or under state supervision. It covers services including housing assistance, health care, counseling, and reentry programs. It issues a certificate of innocence and expungement so that exonerees can clear their names and move on with their lives. It protects taxpayers with a provision to offset state compensation payments with any civil awards stemming from wrongful convictions. I am hoping that Nevada can be the 34th state to pass a wrongful conviction compensation law, and it can be the best one in the country because we have the benefit of knowing what has worked well in other jurisdictions. People, it is never too late. It is never too late to do what is right, and now is the time for our state to take action.

My heart bleeds for Mr. Berry, his wife, and family. Some issues he raised: please have some remedies to the fact he was dropped off after he was released from prison. That is an issue for the Department of Corrections. I think that the statute on A.B. 267 should have a priority for preferential trial setting so that the case can move very fast, especially in Clark County, where the caseload is incredible. Also, I have real misgivings about someone being exonerated but the district attorney insists that they plead guilty either to a lesser charge or an Alford plea. I think that will cause a lot of litigation over the years, so please take a look at

that and make sure the language is clear about someone who was forced, as Assemblyman Fumo said, in a despicable situation, to either plead guilty or plead Alford, which means you do not admit your guilt but you know the facts could convict you, which would eliminate any type of compensation or at least cause litigation for a long time in the courts.

I have written testimony on compensation on A.B. 267 and on factual innocence on Assembly Bill 356 that I will submit for the record (Exhibit E). I have really enjoyed appearing before you over the years, and God bless all of you for what you are trying to do. One final note: It does not matter whether you are on the left of this or you are on the right or you are in the middle, you are upside down or upside right—this is the right thing to do and it needs to be done immediately. Do not postpone this, go with it as soon as possible, and it should be unanimous by everybody. This is a moral thing.

**Jim Sullivan, representing Culinary Workers Union, Local 226:**

All over the country, many states realized that those who have had years taken unjustly from their lives deserve to be compensated for those injustices. Together with the Nevada Coalition for the Wrongfully Convicted, the Culinary Union will work tirelessly this legislative session to ensure our outdated state laws change so that those who are wrongfully incarcerated for crimes they did not commit are entitled to modest compensation from the state.

**Tanja Brown, Private Citizen, Carson City, Nevada:**

I strongly support this bill. I would like to give my profound apologies to Mr. and Mrs. Berry, and I would like to say something on a personal note to Mrs. Berry. Thank you. Your calls and your letters kept this man alive. Thank you.

I would like to make a couple of clarifications on things that were discussed by Ms. Feldman. Clark County does have a public integrity commission that was implemented. Recently, it came to my attention that Washoe County now has the conviction integrity committee. I would like to also add that Senator David Parks has put in Senate Bill 356 [corrected later in testimony to Senate Bill 384], which is an independent public integrity unit commission to look into wrongful convictions in the 15 counties. At the time I asked him to put it in, Washoe County had not implemented one. I decided to test the waters, so to speak, to see how Washoe County's public integrity unit committee worked. I got a decision from them and sent the information to our attorney who is familiar with the case. Her response was, My first question is if she is not going to look behind jury decisions and appeals, what is the purpose of her committee? Are they only looking at confessions that did not appeal? That would certainly make for a light workbook. There are so many missing issues from her letter. It is glaring, but if she is confining herself to non-jury pleas without an appeal, then this is not that.

I am hoping when S.B. 356 [later corrected to S.B. 384] comes over, you will support having an independent public integrity unit to look into how the Clark County exonerations work and give the Legislature information through a case study on it. Again, thank you for coming forward, Mr. and Mrs. Berry.

**Megan Ortiz, Intern, American Civil Liberties Union of Nevada:**

We are here in support of A.B. 267. As we have seen this morning, not providing compensation for those wrongfully convicted only continues to perpetuate their punishments beyond their incarceration. Only 17 states do not offer compensation for those that are wrongfully convicted and beyond that, we all know that monetary awards through civil litigation often take many years, both in getting through litigation and then receiving the funds. This severely hinders a person's ability to rebuild their life. These are meaningful members of the community, like Mr. Berry, who have the ability and desire to contribute to our state, but fighting to stay afloat after enduring a wrongful conviction makes it so much more of a struggle for those individuals to do so. Because of that, we urge you to support A.B. 267.

**Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice:**

This is an emotional morning, I know for me as well because these are our people, our clients. I think it is really important that we look at doing what is right for them. This bill is not about placing blame. It is not about pointing fingers. It is about making things right. I want to address a couple of things, and I hope to maybe clarify some of the questions we have had so far.

There are 13 people who have been identified in Nevada as exonerees who would qualify for compensation. There could be people in the future, but 13 is the current number. Some of those people have already won awards through prior jury processes and whatever amount they got would be offset. As a result, some of those 13 would not be eligible because they already have gotten more money than they would get through this. There are some that were confidential awards and we are not sure what they are so I cannot give you an actual number. It is not a lot; it is not a huge number. We owe it to these people.

I am looking at the proposed amendment ([Exhibit D](#)) by the Nevada District Attorneys Association. I would urge you to reject it. First, it proposes a higher standard of clear and convincing evidence, and we have covered that. Second, it changes some of the language of how you could potentially get to a point where you are eligible for compensation. Those issues are going to be addressed in the next bill so you will hear more from us on that. Finally, it proposes to remove section 2, subsection 2, paragraph (b), subparagraph (3), which says, "The person was pardoned by the State Board of Pardons Commissioners on the grounds that he or she was innocent." Members of the Committee, there is only one person in this state who meets that qualification and that is Fred Steese. I think to remove him from eligibility from compensation would be incredibly cruel, and I urge you to reject the proposed amendment by the Nevada District Attorneys Association.

**Jackie Lawrence, Private Citizen, Las Vegas, Nevada:**

I am a Families United 4 Justice member as well as the voice for my two sons and granddaughter. Because my sons were wrongfully convicted of a crime, one is now sitting in prison and the other one is deceased. My granddaughter will never know her father because he was wrongfully accused of a crime. On December 31, 2015, my son came to Las Vegas to spend his last days out celebrating New Year's Eve when he was approached by officers



with the U.S. Marshals Service who stated and claimed to the Metro police that he was wanted for murder, which is inaccurate. That was not the charge he was being charged with at all. Metro proceeded to approach my son and state that he had a gun in his hand which was his cell phone. He was not able to try to fight his crime because he is no longer here. I am the voice for him, and now that my other son is incarcerated for the same exact crime, wrongfully accused, he is missing out on his children's lives and has lost everything. When he comes home, what is he going to do? He has now been charged as a felon, and as you know, you cannot get a place to live, cannot get a job, you cannot do anything.

I am here to support the bill because something has got to change. Not only that, when you are in court and you are trying to fight a crime that you did not do, basically your choice is to either serve a longer sentence or take a deal and do that time. It is like you are not even given the opportunity to be set free because they scare you with the longer time, so people are actually taking these deals because they are scared of doing longer time even if they did not do the crime. I am here in support of the bill.

**Kristina Wildeveld, Attorney; and representing Nevada Attorneys for Criminal Justice:**

I want to thank Chairman Yeager for bringing forth this important legislation. I will limit my comments solely to the State Board of Pardons Commissioners (Pardons Board) since so much has already been discussed and I echo all the support that has already been offered for this bill. As a private defense attorney who practices before the Pardons Board, I am happy that only one member of the Pardons Board is still present while I answer these questions. The Pardons Board is a board of equity, a political board, and it brings equity to cases. It is an act of grace granted by the Governor and the Board. Actual innocent persons are not meant to appear before the Pardons Board. The function of the Pardons Board is not to relitigate cases. They are a board of equity, they grant clemency and grace, and you cannot go before the Pardons Board if you are claiming actual innocence. The reason Mr. Steese was able to go before the Pardons Board was because he had pleaded to something and they granted him a pardon with regard to that.

**Assemblywoman Backus:**

With respect to the statute, I want to make sure I understood what you said. Because it says a pardon with innocence, did they make a special finding with Mr. Steese, or would this now exclude Mr. Steese from being able to bring the civil action under this proposed bill?

**Kristina Wildeveld:**

As Ms. Rasmussen indicated with the Nevada District Attorneys Association's proposed amendment ([Exhibit D](#)), it would exclude Mr. Steese. Mr. Steese went before the Pardons Board after pleading guilty to a crime in district court and then the Pardons Board pardoned him. It would have excluded him. With the bill as it is written, it allows the district court to grant the exoneration and essentially gives the district court the ability to pardon the convicted person who is actually innocent. As the Pardons Board operates right now—I know there is another pending bill with regard to this—they only meet twice a year and very limited amounts of people appear before them. This would also give the ability for the district courts to do that rather than having to go before the Pardons Board.

**Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:**

Once exonerated, it is not possible to pick up exactly where you left off. Without any support to reestablish one's life, exonerees continue to be subjected to wrongful punishment after incarceration. Assembly Bill 267 will help exonerees rebuild the lives that were taken away from them. When the system fails an innocent person, there has to be a way to make things right. Nevada would take a big step forward in delivering justice to the wrongfully convicted with this legislation.

**John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:**

I will say that this is my greatest professional fear—representing someone like Mr. Berry and failing to help him in the way he needed to be helped. Taking this bill and righting that wrong—and it does not wholly right the wrong—is something that I appreciate all of you considering.

**Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:**

I echo the statements of the other public defenders that this is something that we are all terrified of—having an innocent person go to prison. We need to do something in order to ensure that we provide them with adequate resources to enable them to be successful when they are ultimately released. In Reno in 2016, Cathy Woods was finally released from prison. She served 35 years for a murder she did not commit. I will explain more during the next bill what exactly happened in that case, but I can just let the Committee know that at this point she still has not received any money from the state regarding her wrongful conviction. She is currently in a civil lawsuit and is residing in Oregon. She is surviving on the fact that she has friends who are helping her and she is hoping to get social security disability payments.

**Vice Chairwoman Cohen:**

Is there any other support testimony on A.B. 267? [There was none.] I will now open it up for opposition testimony on A.B. 267.

**Jennifer P. Noble, Chief Appellate Deputy, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:**

I am here in opposition pursuant to the rules of the Committee. The Nevada District Attorneys Association is wholeheartedly behind the intent of this bill. What we are seeking to do with our amendments—and we are happy to work with stakeholders—is to make sure that the process is clear and that it works.

I think sometimes there is an assumption that when I get up here to talk in front of you—and maybe there is not—that I am not affected by stories like Mr. Berry's story. I assure you that is not true. When Mr. Piro said that his professional nightmare is having an innocent person convicted and sentenced to spend 20 years or more in prison, that is my professional nightmare too. I hope that when you listen to my testimony, you will keep that in mind.

What happened in Mr. Berry's case was absolutely tragic. Part of it had to do with jailhouse informant testimony or information, and that person claimed that Mr. Berry confessed to him. It took a very long time, over a decade, for another individual—I believe that person's name was Steven Jackson—to say No, I was the person who murdered that man in the Carl's Jr. That is what happened in this case, and that is what contributed to this tragedy. As you know, I am not an attorney in the Clark County District Attorney's Office. This is a situation—and those situations do happen—where the allegation is that the prosecution hid information. I am sure someone will correct me if I am wrong.

We have proposed an amendment ([Exhibit D](#)) and I want to briefly walk you through it. The person to my left is Michael Large, a civil attorney in the Washoe County District Attorney's Office, and I talked him into sitting with me today in the event there were technical questions regarding the interplay between this bill and *United States Code*, Title 42, Section 1983 litigation, because I am not a civil attorney.

We have heard a lot about the clear and convincing standard rather than the preponderance of the evidence standard in section 2. Hearing from Michelle Feldman, whom I have had the pleasure of working with over the interim on the Innocence Issues Working Group, which was a part of the Advisory Commission on the Administration of Justice, I would be happy to talk to her about how that caused difficulties in the cases she is referencing and possibly work on taking out that language.

Our next amendment, which is in section 2, subsection 2, paragraph (b) beginning at line 20 ([Exhibit D](#)), is our attempt to connect these causes of action to post-conviction litigation which is what happened in Mr. Berry's case. We had a petition for writ of habeas corpus so ultimately the procedural bar was excused and, based on the information from that, the case was dismissed because—based on my understanding—with all of that information they could not go forward on the case. That is where we make these determinations. I also added "or other postconviction remedy" at line 21 ([Exhibit D](#)), and the reason why I did that is because in our next bill, for which we will again be at the table in opposition—but I think that Assemblyman McCurdy and the Innocence Project will agree that we are very close to resolution on that bill and coming to consensus—I wanted to make room and make sure that there was room for that type of newly discovered evidence-type of factual innocence claim.

Ms. Wildeveld talked about the Pardons Board, and that would be our amendments that would delete lines 25 and 26 in section 2, subsection 2, paragraph (b), subparagraph (3). She referenced it as a political process and for that reason we do not believe it fits within the framework of this type of litigation properly. It should be a Judicial Branch function rather than an Executive Branch function to make the determination giving rise to civil compensation in this bill.

In section 6, subsection 1, paragraph (a), I have again incorporated the language of petition for "a writ of habeas corpus or other postconviction remedy," and again, that is simply to contemplate situations in which a determination is made by that post-conviction writ that

already exists and the new procedure vehicle which we hope to exist after Assemblyman McCurdy's bill passes.

Finally, moving to section 8, that has to do with the interplay between potential federal litigation and this type of civil litigation. I would like Mr. Large to explain a little bit about how that works.

**Michael Large, Deputy District Attorney, Washoe County District Attorney's Office:**

With respect to section 8, what we are seeing in these cases in a great number of situations is we have parallel litigation that would occur. We would have a wrongful conviction statute brought in state court that would hopefully be expeditious and would resolve and be able to get someone back on their feet. It has compensatory damage awards of \$50,000, \$75,000, and \$100,000 per year depending on the number of years spent in prison, along with other attributes. There is also the attorney fee provision within this statute. On a parallel track, you would have a 42 U.S.C. § 1983 civil litigation brought alleging certain constitutional violations. That action is typically brought in federal court and it does take years and years to resolve.

What we have here is a situation where we are going to have two damage awards: one would be against the state, which is the wrongful conviction; the other would be against the municipality and would be potentially limitless. The state is essentially saying \$50,000, \$75,000, and \$100,000 are sufficient for compensatory damages. Those are the same awards that are being sought in a civil litigation brought pursuant to 42 U.S.C. § 1983. It is just a quicker forum to get into court. The offset provision [section 8, subsection 3] in the bill—in regard to the state being compensated if there was subsequent civil action—is good in terms of the state not having to pay a double award, but it does not foreclose the taxpayers having to spend money for their municipalities to litigate and spend, in some cases, years and years in litigation on these claims. I know that some states in their wrongful conviction statutes have an exclusive remedy. The state of Washington is one of those that has that and it should be an exclusive remedy in regard to the compensation side. In that case, you would have a lot more municipalities that would say that this is a really, really good bill that they would be willing to get behind.

In terms of the 42 U.S.C. § 1983 litigation, I think section 8, allowing the state to take it back, is a good first step. But I also think we need to look at whether or not this should be the only remedy that, if they are going to pursue 42 U.S.C. § 1983 litigation, perhaps they cannot pursue this.

**Assemblywoman Backus:**

Taking your attention to section 8, where I know you are looking at the two suits, but as I look at it, the state suit under A.B. 267 seems like a quick remedy that is much needed when these awful situations happen. I just calculated the damages for Mr. Berry, and I do a lot of civil litigation and I see huge awards for damages for two years. This is 23 years he spent in prison along with the rest of his life that is impacted and the award could be \$2.3 million. If there was an appropriate case for a civil rights action, I can see where the

two can go, and that leaving in the offset is probably the most appropriate thing so there is no double award for the same damages. I guess it is more of a comment, but can you see the difference? What is the burden of proof in a civil rights action?

**Michael Large:**

It is a preponderance of evidence in the civil rights action. In regard to your initial comment, I understand in terms of the offset. There are cases that should be brought as a 42 U.S.C. § 1983 civil rights action when there is intentional misconduct and blatant disregard for constitutional rights. But that is not the remedy in many cases that we are seeing. What we are seeing is when someone is exonerated or charges are dismissed based on newly discovered DNA evidence; they have gone through the process in certain instances and, through no fault of the prosecutors or the officers, they are facing years and years of litigation based on technology that was not available 30, 40, or 50 years ago. That is the type of thing where we would say there are certain situations where, if you are going to allege intentional misconduct, that is one thing, but if you are simply trying to find a remedy for a solution, I think this should be the exclusive remedy. I think this is an appropriate situation.

**Assemblywoman Backus:**

I probably agree with your latter statement and I think, now that we will hopefully get this bill passed, it does provide that avenue so both sides do not have to have that uphill battle in those situations where it is not warranted.

**Vice Chairwoman Cohen:**

We have heard reference to the jailhouse confessions today. What is the district attorney's office doing to prevent the problems that we have seen with jailhouse confessions?

**Jennifer Noble:**

During the interim session, we worked on three different topics with the Innocence Project. One of them was this jailhouse informant-type of concern because we do recognize that jailhouse informant testimony and information is often inherently unreliable. What we agreed to do, and I believe this was the consensus we came to with the Innocence Project, is each of the 17 district attorney's offices in Nevada agreed by January 1, 2019, to adopt a policy regarding the disclosure of jailhouse informant testimony. In other words, if someone is, for lack of a better term, "snitching" on people left and right just trying to get a deal, that is information that falls under *Brady v. Maryland*, 373 U.S. 83 (1963), but now we are required to track it and make sure that we have accurate mechanisms in terms of keeping track over the years so that we can convey that in any case where that person is a witness.

**Assemblywoman Torres:**

In most of our civil cases the burden of evidence is the preponderance of evidence, correct?

**Michael Large:**

That is correct.

**Assemblywoman Torres:**

So what would be the rationale for changing it in this type of civil case to clear and convincing evidence? I am just not entirely convinced that that makes sense, that we would have this specific type of case have a higher level of burden of proof.

**Michael Large:**

While I was not part of the amendment ([Exhibit D](#)) to this, I will say that there is a difference between being wrongfully convicted and being actually innocent of a crime. Simply because the conviction gets reversed, does not mean that someone is actually innocent. Proving actual innocence, and I can see the viewpoint of many people, should be a higher burden. It should be a burden of setting forth the facts that say, I am actually innocent of this crime. I was nowhere around. I did not do these things that I was convicted of.

**Jennifer Noble:**

You are asking a great question and there are a couple of different concepts that we are talking about here. We are talking about factual innocence which applies to Mr. Berry, and legal innocence, which can apply in a number of different cases. That is where essentially the state made an error and the conviction is no longer valid. But that does not mean that the person did not commit some act giving rise to the charges at issue in the case.

**Assemblywoman Torres:**

I am just looking at my understanding of the law that we are innocent until proven guilty and that there is still a burden of proof when we have clear and convincing evidence. There is still a burden of proof for preponderance of evidence. It is not eliminating that burden of proof. I guess I just do not see that putting an additional burden is necessary.

**Jennifer Noble:**

Assemblywoman Torres, your point is well-taken. As I tried to convey in the beginning of this presentation, it is my wish to talk to Ms. Feldman and the Innocence Project so we can talk about those two different burdens of proof that she indicated are used in the various states with statutes like this and talk about the difficulties that increased burden presents and why. We would be happy to work perhaps on amending that out of our amendment.

**Assemblywoman Miller:**

It just seems quite ironic that we are requiring a higher burden of proof when that same burden was not actually exercised during the trial, if there was one, because obviously when we are talking without a shadow of doubt, there obviously was doubt for someone who was actually innocent, and not just legal innocence but actual innocence, specifically in Mr. Berry's case. My question is, what then is the remedy? What does the state owe an individual who has had years of their life stripped away? I know that you are saying that you really would like to support this, but it also sounds as if we really do not want to be accountable for what happened. We have so many constitutional rights put into place to protect us and I do not want to use the words against the prosecution, but essentially that is what they are. Can you just share what you feel the remedy is? Do you feel that these

individuals, I do not want to say "deserve" as if it is just given to them, but that this is earned? Could you speak on that?

**Jennifer Noble:**

I am going to start by saying respectfully that I disagree with your characterization that we are trying to avoid taking responsibility. But keep in mind these tragedies occur in different types of circumstances and it is possible, and often the case, especially when we have DNA evidence now, that the conviction is not due to prosecutorial error, it is not due to the prosecutor just being a bad person and not caring whether the person was innocent or guilty. There was a burden of proof applied that the state prove the case to a jury who made the decision beyond a reasonable doubt. I think that point is important to keep in mind. Now if the prosecution hides evidence, if the prosecution through gross negligence does not hand over evidence—that is absolutely something we take responsibility for. To the extent that we may be contributing to some other type of extended incarceration of an individual, I agree that is something we could be held accountable for as well. But our system is the best in this world and, as someone stated earlier, it is imperfect and we go to trial with the facts that we have, with the evidence that we have, and if the prosecutor is playing fairly and acting ethically, I think that this Committee needs to keep in mind that wrongful convictions can still happen and they do.

**Assemblywoman Miller:**

Will you answer my second question as to what do you feel should be the appropriate remedy?

**Jennifer Noble:**

Thank you for the reminder. The appropriate remedy in terms of how much money someone should get?

**Assemblywoman Miller:**

Do you support this bill? Do you support this idea of what is being proposed here?

**Jennifer Noble:**

Absolutely, and I hope I stated in the beginning of my testimony that we support the principle behind this bill and the compensation for persons who are wrongly convicted and the removal of the cap. We support that. If I was not clear on that before, let me be clear now.

**Assemblywoman Nguyen:**

I guess what resonates with me most of all is that we all recognize that this is not a perfect system and we as human beings are not perfect people. I think this bill allows for us to recognize the shortcomings that we have as a state, as individuals, as people in these positions of power and influence, and this bill gives us the opportunity to do so. I am reminded also that Mr. Berry, in this case, faced the death penalty and we as a state and as a society are lucky that he did not receive that sentence. I am glad that he is here today, and I am hoping that the rest of the Committee will support this bill. I think there is a lot of

support going forward on this. I am thinking of the added compensation. He will never get his youth back. I cannot even imagine the life events that he has missed out on, and I am sure that his wife and his family and his supporters are there to make every moment of his life going forward, from being dropped off in downtown Las Vegas, a wonderful life. But even with that added compensation, this bill will give him a small chance, and I think he should have the opportunity to take advantage of any other civil lawsuits that are out there that he can take advantage of. As a taxpayer, if that is where my money is going, I do not have a problem with that.

**Jennifer Noble:**

I do not have a response to that. Obviously we have some disagreement on that particular issue. However, there is one issue that I would like to briefly correct on the record here today. The Conviction Integrity Committee of the Washoe County District Attorney's Office, which I sit on, does exist. Clark County is not the only county in Nevada that has something that works that way. Ours is structured a little bit differently, and if any member of this Committee has any questions about how it functioned in the review of Nolan Klein's case, I would be happy to answer those offline and share any communications and evaluations that we did.

**Vice Chairwoman Cohen:**

Are there any other questions from Committee members? [There were none.] Is there any other opposition testimony to A.B. 267? [There was none.] Is there any neutral testimony to A.B. 267? [There was none.] I will invite the presenters back to the table for concluding remarks.

**Assemblyman Yeager:**

I again want to recognize in particular Ms. Herndon, who was tremendously helpful in this endeavor over the last year, as well as Ms. Feldman. If I could, I would like to give Ms. Herndon the opportunity to say a few words before my closing remarks.

**Kaitlyn Herndon:**

As Assemblywoman Hansen mentioned, I am only 21 years old and I feel like it is extremely relevant to say that I imagine 20 years as being the height of how far I have lived and as much as I have lived. I cannot imagine having lived 23 years and further having had 23 years taken from me. I think that it is very exciting to see so many people be supportive and see the sheer magnitude of this situation. I am thankful for your questions and your kind words and working collectively to make this the best bill possible. I find it very important that we are all sitting here today and acknowledging that there are people behind all of these numbers and the complicated legislation and the way it will be interpreted in the actual law. This will affect real people and will give them the second chance that they deserve and the second chance that we support.

**Assemblyman Yeager:**

Thank you, Ms. Herndon, for traveling here this morning to be with us. In this Committee, we often talk about what the particular penalty should be for a crime. We talk about whether



something should be a category B, C, or D crime. We are talking about penalties with a high end of four years, five years, maybe even ten years. What we are talking about today is 20-plus years. I want everyone in this room, those who are still in Las Vegas and those watching over the Internet, to think about what you were doing 23 years ago. For me, I was 17 years old and I was a junior in high school. Just think for a moment about everything that has happened in your life over the last 23 years. All those relationships you built, the successes, the disappointments, and then imagine having that all taken away from you and being in a cage for 23 years for a crime that you did not commit when the real perpetrator is free and society loathes you because you are a convicted murderer, maybe your family abandons you. Not everyone had the support like Mr. Berry did.

And contrast your life over the last 23 years with what Mr. Berry and others like him went through, when you start to think about that, it will probably make you emotional, which is always good to make sure your tear ducts are still working. You begin to scratch the surface of the incomprehensible and unfathomable wrong this has been. My desire for us is to let us all have the grace and dignity of Mr. Berry. I just cannot imagine spending that kind of time in prison, and he told you today that this is not about him. He was very hesitant to even come here and talk to the Committee. It is about other people.

As the preamble to the bill states, innocent persons, like Mr. Berry, who have been wrongfully convicted, have been uniquely victimized. They have lost years of freedom. They have missed out on economic opportunities to establish careers, obtain assets and build savings, and build family relationships. There is simply no way to make up for the time that was unjustly taken from them, but A.B. 267 would at least provide financial compensation and services to start repairing the damage that was done. With that, I thank you for your questions and your attention this morning, and I urge your support.

**Vice Chairwoman Cohen:**

Thank you again, Mr. and Mrs. Berry, for coming to share your story with us. I will close the hearing on A.B. 267. [Assemblyman Yeager reassumed the Chair.]

**Chairman Yeager:**

Thank you, Vice Chairwoman, for running the hearing on the first bill. For Committee members and members of the public, we are not going to get to Assembly Bill 422 today, but will roll it to another day.

**Assembly Bill 422: Revises provisions governing criminal procedure. (BDR 14-1096)**

[Assembly Bill 422 was agendized but not heard.]

I will open the hearing on Assembly Bill 356, which revises provisions governing criminal procedure. Welcome, Assemblyman McCurdy, to the Assembly Committee on Judiciary.

**Assembly Bill 356: Revises provisions governing criminal procedure. (BDR 14-863)**

**Assemblyman William McCurdy II, Assembly District No. 6:**

I am here to present Assembly Bill 356, which revises provisions governing criminal procedure.

Sir William Blackstone, a famous legal scholar, wrote, "Better that ten guilty persons escape, than that one innocent suffer." [4 William Blackstone, Commentaries \*358] We cannot begin to estimate how many false convictions there are, but what we do know is that since 1989, there have been over 2,400 exonerations in the United States with over 21,000 years lost. In Nevada, there have been 13 exonerations with a loss of 175 years.

Before I talk about the details of this bill and the need for this legislation, I would like to share a story with the Committee, a story that you have just recently heard, but I would like to go into a little bit more detail of what happened. On April 24, 1994, a man armed with a pistol robbed a Carl's Jr. restaurant in North Las Vegas. Although most of the employees went unharmed, Charles Burkes, the restaurant manager, was killed during the incident and the suspect was able to escape on foot. After receiving several tips and eyewitness testimony from the employees, the police investigation identified an 18-year-old man named DeMarco Berry, who was also in the area that night, as the main suspect. Despite inconsistent testimony from eyewitnesses and a lack of physical evidence linking Mr. Berry to the crime, he was convicted of first-degree murder, robbery, and burglary and sentenced to life in prison with the possibility of parole.

In spite of his conviction, Mr. Berry maintained his innocence throughout the trial and filed several petitions for his case to be reconsidered in light of the circumstances that arose both during and after his sentencing, including an admission of guilt from the actual perpetrator of the crime in 2013. As you all know, his exoneration happened later. What happened there, you might ask yourself? Nearly all of the petitions were dismissed for various reasons, resulting in Mr. Berry spending more than 20 years in prison for a crime he did not commit. Can you imagine? That could have been me or that could be my son. I cannot imagine two decades being taken from me. Let us allow that to sit.

On June 28, 2017, with the help of the Rocky Mountain Innocence Center, the charges against Mr. Berry were finally dismissed and he was released two days later. I am honored to have DeMarco Berry here with me today, and I look forward to having him share more of his story with the Committee, but he is not the only person who has had to go through this opaque and often convoluted process to establish his innocence. He is just one of many citizens who has had to face down the consequences of an erroneous conviction. Since 2011, there has been a steep increase in exonerations based on non-DNA evidence such as false testimony, mistaken identification, or misconduct of officials, all of which played a factor in the process that put Mr. Berry in prison.

Under *Nevada Revised Statutes* 176.515, a defendant can be granted a new trial in Nevada based on newly discovered evidence. Though there is no time limit for introducing new

DNA evidence of innocence, the current law only allows a person to present new non-DNA evidence within two years of conviction—even if there is no way the evidence could have been discovered within that time. The average time spent in prison for someone who is later exonerated is nine years, which means that not only are innocent citizens stuck in prison for crimes they did not commit, but they are also incarcerated for longer than necessary under the current law. Additionally, 80 percent of wrongful convictions in the United States have been overturned with non-DNA evidence.

The intent of A.B. 356 is to create and outline a specific process for both the court and the petitioner to follow in order to establish innocence regardless of when new evidence is discovered. Although we may never live in a society completely free of situations like Mr. Berry's, this legislation is just one step in making sure that we can rectify them quickly and effectively when they arise.

Current law gives a person who has been convicted only two years to present factual evidence that can prove their innocence. This bill allows for newly discovered evidence to be used in filing a petition for a hearing to establish the factual innocence of a person.

Sections 3 through 5 establish definitions used in the bill. Section 6 establishes provisions relating to the filing of a petition for a hearing and sets forth certain requirements relating to the content of the petition. The district court is required to review the petition to determine whether the petition satisfies the necessary requirements. If the petition does not meet the requirements, the court must dismiss the petition without prejudice.

Section 7 dictates if the petition is not dismissed after the court's review, the court is required to order the district attorney to file a response to the petition and authorizes the petitioner to reply to the district attorney's response. In addition, if the court determines that the petition satisfies all requirements and that there is a bona fide issue of factual innocence regarding the charges, the court is required to order a hearing on the petition.

If the factual innocence of the petitioner is established, the court is required to: (1) vacate the petitioner's conviction and issue an order of factual innocence and exoneration; and (2) order the sealing of all records of criminal proceedings relating to the case.

Section 8 authorizes the court to appoint counsel for an indigent petitioner if the court grants a hearing on the petition filed. Section 9 requires the district attorney to make reasonable efforts to provide notice to any victim of the crime.

Mr. Chairman and Committee members, I urge your support of A.B. 356. This concludes my presentation. I have here with me today Michelle Feldman from the Innocence Project to help present with me. Thank you for your consideration of this bill, and I look forward to answering any questions you may have. [Assemblyman McCurdy submitted ([Exhibit F](#)), amendments to A.B. 356, on behalf of Michelle Feldman of the Innocence Project but did not discuss it.]

**Michelle Feldman, State Campaigns Director, Innocence Project:**

I will lay out the current landscape and then delve into the bill a little deeper. I wanted to address the amendment ([Exhibit G](#)) submitted by the Nevada District Attorneys Association. For some of the amendments, we had a really good working group call two days ago and we agreed to most of what they proposed. It looks as though this version of the amendment was walked back, which is disappointing. But I will explain the problems with some of the amendments. And again, some of them we had agreed to and I thought that some of them that are in this version we had all agreed that they could not move forward. I just wanted to make that clear in the onset.

There is currently in Nevada a motions for new trial law [NRS 176.515] that says a convicted person has two years after their conviction to introduce new non-DNA evidence even if there is no way that evidence could have been presented in that time. DeMarco Berry is the perfect example: 17 years after he was convicted, the real perpetrator confessed. He had no way to get back into court with that new evidence. The only avenue currently available is called "state habeas" and the petitioners have to allege that their constitutional rights were violated. Mr. Berry's lawyers had to shoehorn this real perpetrator confession into a constitutional violation claim, which really does not fit, and the district court dismissed the petition. Mr. Berry's attorneys appealed to the Nevada Supreme Court. The Nevada Supreme Court sent it back to the district court saying that they had to at least have a hearing on this. At that point, the Conviction Review Unit in the Clark County District Attorney's Office had been established. They agreed to take the case, and then in 2017, they agreed to dismiss the charges.

Again, Clark County has the only conviction review unit in the state. I want to be very clear about it. There is a big distinction from what a conviction integrity unit is, and if you want to visit the Innocence Project's website, we set forth the criteria for what that is. It means that you have an independent attorney who does not work in the prosecutor's office, who is not tied to people who have prosecuted these cases, coming in to take a fresh look at the case and actually doing investigative work when there are leads on new evidence and seeing if there is a wrongful conviction claim. I am not sure what is set up in the Washoe County District Attorney's Office. I know the appeals division's job is to defend the state's conviction. I just want to be completely clear about it. Furthermore, if Mr. Berry's case would have been in another county, he would still be in prison.

The easiest thing for us to do would have been to take out that two-year time limit in the motions for new trial law. That is what I worked on last year in Connecticut. They had similar motions for new trial law. We replaced the three-year time limit in that with broader language allowing a three-year time limit or if the new evidence could not have been discovered with due diligence. Something new, such as a real perpetrator confession, obviously you could not have discovered that at the time of your conviction. The standard in the motions for new trial law is the new evidence has to show a reasonable probability that you would not have been convicted. That is a lot lower standard than what this factual innocence law is that we are putting forward. We heard the concerns of the Nevada District

Attorneys Association during the innocence working group meetings, and we decided that a more reasonable and conservative approach is a factual innocence statute.

We modeled this bill after what Utah and Wyoming enacted. Utah enacted a law in 2008 and it is pretty much the same as this version of the bill. They have had 15 petitions in the whole state filed since then. So in ten years, only 15 petitions, and two of those people were exonerated. It has a minimal impact, but a very important one. In Wyoming, we passed a law and actually did it in a coalition with the attorney general's office and the district attorneys association there because they saw the problem in saying after a certain amount of time you cannot present new evidence that you are innocent. Since 2008, when it became effective, they have had 12 petitions filed. The judges summarily dismissed eight of those. It has really been a small impact. One more thing I should point out is that Nevada has a statute for new DNA evidence. Nevada has recognized the power of DNA that could exonerate someone and there is no time limit on a convicted person to apply for DNA testing and to be exonerated with DNA testing. New, non-DNA evidence also has the power to exonerate people, and that is what this factual innocence statute is setting out.

Most importantly, and I think this was raised in Ms. Noble's testimony, is the difference between factual innocence and somebody just having their conviction dismissed. You cannot move forward with a petition unless you have a bona fide factual innocence claim. That is defined as newly discovered, non-DNA evidence that would establish the person did not commit the crime. You have to meet that on the onset just to have your petition reviewed by the judge and not summarily thrown out. You need to have new evidence that affirmatively shows that you did not commit the crime.

Section 6 lays out the requirements the petitioner has to show up front when the judge is reviewing the petition so that the claim is not summarily dismissed. It includes five pretty strict factors regarding newly discovered evidence:

- You have to have new evidence that could not have been previously discovered with due diligence.
- It has to establish your innocence, which means you did not commit the crime or any related offenses.
- It has to be material to the case, and cannot be merely cumulative or impeaching.
- It cannot be solely recantation evidence.
- It has to be distinguishable from prior claims.

You have to meet those five things just for the judge to say that he will allow the petition to move forward and not throw it out. If you get past those five very high requirements, the judge can then order the state to respond, and then the petitioner is allowed to respond to the state's response. Then the judge can decide whether or not to hold a hearing. At that point, both sides present their claims and the judge has the option to vacate the conviction if the person proves by clear and convincing evidence. Nobody is going to get relief unless you prove that highest standard of clear and convincing evidence. If both parties agree at that point that the person is factually innocent based on the petition and the claims, the judge does

not have to hold a hearing and the state can stipulate to that. It is a very narrow bill. It only applies to a very limited set of circumstances.

I would like to explain our concerns about the amendment ([Exhibit G](#)) submitted by the Nevada District Attorneys Association. Most of them we can agree to. One of the provisions they suggested is in their new section 6, subsection 2, paragraph (b), wherein it would require the petitioner to act within a reasonable period of time after the newly discovered evidence became available. DeMarco Berry's case is a perfect example of what we are afraid of. The actual perpetrator confessed. The Rocky Mountain Innocence Center could have tried to get back into court the next day but they knew there was another piece there. There was a jailhouse informant and they had to then track down that jailhouse informant. The jailhouse informant recanted and said, I did this because I wanted my own charges dismissed. They had to put that evidence together to try to make a claim. I think that the state will always use that requirement to say it was not introduced quickly enough. There is already a due diligence requirement that is in the statute that says you could not have previously introduced the evidence with exercise of due diligence. That should really capture that problem.

The procedure is that you make the petition, the judge sees that you meet the five criteria, the judge can dismiss it or the judge can allow it to move forward. At that time the state argues against it or can respond, and then the petitioner can respond. The amendment ([Exhibit G](#)) is adding an additional procedure before the state has to respond where the court would decide what specific evidence is credible and what is not, which procedurally does not make a lot of sense. At that point, if the judge has already said that there is a bona fide claim of factual innocence and he wants to hear both sides, it does not make sense for the court to go back and make another assessment to find what evidence specifically the state has to respond to. Those were really our concerns with what was put forward by the Nevada District Attorneys Association, but we are happy to keep the discussions going.

**Assemblywoman Cohen:**

A general question: there are some specifics in the bill about ineffective assistance of counsel and we have discussed that in this Committee already—that that is a really high standard to get the court to acknowledge that there has been ineffective assistance of counsel. Can you please address that?

**Michelle Feldman:**

The idea with that provision is part of the court's assessment as to whether the new evidence could have been discovered with due diligence at the time of the conviction. The idea is that the court should not penalize defendants just because their attorneys failed to do their due diligence in seeking out evidence of their innocence and yes, it is a very high standard. This is a very conservative approach. Most states do not have any time limit on when you can introduce newly discovered evidence. Nevada is one of only five states with that absolute restriction and, in addition, if you are alleging in federal court that the state illegally withheld exculpatory evidence, you have to just meet the standard of reasonable probability of a different outcome at your trial, which is so much lower than what we are proposing here. Again, we are proposing a very conservative bill.

**Chairman Yeager:**

Could you explain how the mechanism that is put forth in A.B. 356, if at all, interacts with the compensation provisions of Assembly Bill 267?

**Michelle Feldman:**

If somebody was exonerated under this factual innocence law, they would be eligible for compensation. With the amendments in the compensation law put forward, people who were exonerated based on the state illegally withholding exculpatory information or ineffective assistance of counsel would also be eligible. If, of course, you were exonerated with DNA testing, you would be eligible. This would be another way for people to show that they are innocent and then apply for compensation. The compensation law and this law requires affirmative proof of actual innocence. It is not just a technical error that the court did something wrong at trial and you get it overturned. You have to have proof that you did not commit the crime.

**Chairman Yeager:**

I wanted to clarify as well—but I think the scenario we talked about with A.B. 267, where someone was incarcerated for multiple offenses, would make them ineligible for compensation—they would still have the ability under A.B. 356 to come forward and essentially get exonerated for one of the crimes. Is that the way you envisioned it working for those scenarios?

**Michelle Feldman:**

Yes, that is correct. The factual innocence statute not only requires affirmative proof you did not commit the crime, it also requires affirmative proof that you did not commit any related offenses. So if you were convicted of murder and you should have been charged as an accessory to murder, this is not applicable to you. However, if you were convicted correctly of one crime, totally unrelated, and then you were wrongfully convicted of a different crime, and you had affirmative proof that you were innocent, you would be eligible.

**Chairman Yeager:**

Do we have any questions from Committee members? [There were none.] I will open it up for additional testimony in support of A.B. 356.

**Jim Sullivan, representing Culinary Workers Union, Local 226:**

We are proud to join the Nevada Coalition for the Wrongly Convicted to fight to change Nevada's draconian criminal justice laws. It is shameful that Nevada is only one of five states that has a timeline on presenting non-DNA evidence for the wrongfully convicted. Our union is willing to fight with this coalition to change the law. We urge you to support A.B. 356.

**Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice:**

I wanted to just follow up on some things that were talked about during the last bill hearing that flow over into this, which has to do with some complicated concepts. With regard to the burdens of proof, we talked about them with regard to the compensation bill. In this bill, the

burden of proof to establish that you should have a hearing with the court is a preponderance. The burden to then have the court establish that you are actually innocent is clear and convincing, and then going back to the compensation bill, that burden is preponderance.

I think, as some of the members of the Committee know because they practice civil litigation, clear and convincing is reserved for very special circumstances, especially in the civil context. For example, it is applicable when we are determining whether or not we are going to punish someone or for punitive damages. In the context of the compensation bill, it is not about punishment and it is not about making a determination as to what went wrong; it is about compensating people going forward.

In this bill in this context, what allows you to initiate the process with the court and for the court to decide that you get to have a hearing, is a burden of preponderance; but for the court to actually determine that you are innocent, it is the higher standard of clear and convincing. As Ms. Feldman explained, it is already a very high standard. I know when I worked with the interim committee last summer, some of the district attorneys that we worked with had concerns that this would open some kind of floodgate. I think we talked to prosecutors in Wyoming and Utah who assured them that had not been the case in their jurisdictions. I think Utah, since they enacted a similar bill in 2008, only had 15 petitions filed. It was not some huge burden that was going to be imposed on the district courts or the district attorneys. I thought it was important for all of you to know that.

These are, even for lawyers, complicated concepts, but this bill addresses a narrow category of people who do not otherwise have eligibility for relief. When someone is convicted in a criminal case, they go to a direct appeal process. They then, under Nevada statutes and the Antiterrorism and Effective Death Penalty Act of 1996, have only one year to bring any post-conviction claims. That would be anything that they did not address at the trial or in the appeal or it is often a constitutional claim such as a lawyer being ineffective. It can be new evidence, but it is only one year.

Then we also have the Nevada statute that says you can, for any reason, if you have newly discovered evidence, bring a motion for new trial within two years. At the most, someone has two years to bring a claim if they become aware of evidence that establishes their innocence. As you understand in Mr. Berry's case, 17 years later somebody else confessed to the crime. There would have been no way for him to seek out the actual perpetrator. There is no constitutional violation that was applicable, and this bill helps those people in this narrow category who did not have a basis, and this happens. I can tell you it happens because I practice in federal court doing post-conviction habeas corpus litigation and we often have claims of actual innocence, and the federal court says to us, I am sorry, but if you did not bring this in the state court, I cannot hear it. It cannot be brought in the state court right now and that is the problem. That is why this bill is important. It is very narrow and very conservative. An almost identical bill has been adopted in other jurisdictions that are conservative jurisdictions like Wyoming and Utah. We are one of the very few states that really limits people who are actually innocent in their ability to come to court and ask for



relief. I urge your support of A.B. 356 as well. It goes hand in hand with the compensation bill.

**Assemblywoman Nguyen:**

I practice in this area, but for education of the rest of the Committee, can you explain how long they keep evidence of these crimes, if you know?

**Lisa Rasmussen:**

It is probably better to have a district attorney answer the question. I know that oftentimes many years later we have gone to the evidence vault to try to get evidence of something or we have contacted Metro to see if something is available and sometimes it is not. That is particularly true with the older cases. I think in the modern era we are better about keeping information because we have better mechanisms for storing it. But for cases that date back to the 1980s and 1990s, it is possible for evidence to be gone.

**Kristina Wildeveld, Attorney; and representing Nevada Attorneys for Criminal Justice:**

I want to thank Assemblyman McCurdy for bringing forth this bill. As Mr. Piro said, it is very easy to represent someone who is guilty of a crime. We make sure their constitutional rights are protected and we do everything we can to help our client navigate their way through the system, eventual sentencing, and if they are entitled to relief, to get them relief of any kind that is possible. It is very frustrating and a most difficult task to represent someone who is actually innocent or that you believe is innocent. It is extremely frustrating when we have obstacles put in front of us which are the laws that we must abide by—time limits of two years and one year—then meeting with somebody who we think has a good claim and having to tell them their time limit was blown. You only had one year to bring this forth or two years to bring this forth. It is an extremely, extremely frustrating task as an attorney to be with someone who you know has a really good claim but we are limited as to what we can do for them.

In the case of Mr. Berry, all of his time limits were blown. He had no more litigation ahead of him. To put this in perspective, had Mr. Berry, who was facing the death penalty, been convicted and on death row, his time limits were done. He had no more litigation and he could have been executed. You have all heard from Mr. Berry and seen who he is as a person, and just let that sink in—as that was a possibility in his case. I appreciate the time that you have all put into this. It was wonderful meeting with all of you yesterday and having the opportunity to see your interactions with Mr. Berry and getting to know him as an individual. We appreciate the magnitude of what you do here today. We urge your support of A.B. 356.

**Tanja Brown, Private Citizen, Carson City, Nevada:**

I want to make a quick correction. Previously I stated that there was a public integrity unit commission and I indicated that the bill was Senate Bill 356. I misspoke, the bill is actually Senate Bill 384. That bill actually has a petition for exoneration. We did not realize there were two, but it also covers posthumously.

In 2011, our attorneys filed a petition for exoneration and the Nevada Supreme Court issued an order finding a judicial defect to grant petitions for exoneration. They suggested that a petition for exoneration posthumously be created by legislation and we are here today to hopefully get this done. The reason we filed our petition for exoneration was because, as Ms. Noble spoke, I had a brother who spent 21 years in prison for a crime he did not commit. He was dying and he was appearing before the Pardons Board on a compassionate relief.

During this time, the district attorney's office was contacted and he revealed something that had been litigated ten years earlier but they did not know the answer to it. Now we knew the answer. Based on that, our attorney filed a motion to compel Mr. Richard Gammick to turn over the DNA test results. Judge Adams issued an order including the entire file in his case. When the case was turned over in 2009, all the exculpatory evidence was found hiding in the district attorney's file, including the handwritten notes of the prosecutor to find the court order to turn it over. We filed shortly thereafter a motion for new trial. My brother died. He never made it out. Hence, the petition for exoneration.

I am asking that you support this and take a look at S.B. 384. There will be some documentation that was presented and given to Ms. Noble under the conviction integrity committee.

**John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:**

My testimony remains the same for this bill. It is my greatest professional fear that I would fail somebody like Mr. Berry by not digging hard enough or looking hard enough or that I did not do enough of the work or I missed something along the way. To right a pathway to fix that wrong is a great opportunity. I urge your support of this bill as well.

**Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:**

We are in full support of adding this additional pathway to ensure that our clients do receive justice. As I mentioned during the last bill hearing, our office represented Cathy Woods. She had originally confessed to a murder when she was in a mental health hospital in Shreveport, Louisiana. It is my understanding that she confessed several times to having committed this murder. She went to trial in 1980. The jury returned a verdict of guilty, which was ultimately overturned. She had a second trial in 1985 and was sentenced to life without the possibility of parole. While she was in prison she received mental health treatment and it was my understanding that this case brought attention to law enforcement in California because they believed there was an individual who they thought had committed murders out there which was connected to this case. It is my understanding that the district attorney's office also worked with our office and the Innocence Project to have a cigarette butt that was found next to the individual who was murdered tested for DNA. The DNA was then linked to another individual.

I actually became involved in this case and was able to watch a hearing for a motion to dismiss, so I got to see Cathy Woods, and see how her life had changed from being in

custody for 35 years. Due to the state stipulating, this case was ultimately dismissed. What is terrifying is that 24 honest citizens of Nevada convicted her. She was convicted twice. She had some of the best legal minds in our community involved in her case, so it is not through any fault of the attorneys, but it is 24 people who looked at the evidence and determined that she was guilty. Having this factual innocence petition is extremely important to criminal defense in our state. We urge your support of A.B. 356.

**Chairman Yeager:**

I would recommend to Committee members, if you are not aware of the Cathy Woods case to look that up. It is really a tragic case that originated here in northern Nevada, but as was stated, she spent more than 30 years in prison and confessed to a crime that she did not commit due to some mental health issues. There are some really good articles out there about that case and I think it provides a little bit more context to the two bills we have heard today.

**Megan Ortiz, Intern, American Civil Liberties Union of Nevada:**

I just want to say thank you to Mr. Berry for being here today and being willing to share his deeply personal story with us and the struggles that he has endured. This is important to me personally because what brought me down the path to law school were personal things that happened in my life where I decided that I really wanted to help people in the justice system.

It is very apparent here that Nevada is behind. Forty-five other states do not have this hard time limit. Nevada's is two years and it does not even matter if the evidence was undiscoverable at that time. This leaves little to no options for those people who were incarcerated. We have already heard that constitutional claims are what come forward and those rarely ever hold up in court, even when it is a Fifth Amendment due process claim. As Mr. Berry said, we have the opportunity to do the right thing now. I stand with all of my colleagues who have spoken already and support A.B. 356.

**Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:**

I will just echo the sentiments of everyone who spoke before me and add that we are in support of A.B. 356 and believe it is time for Nevada to catch up with the 45 other states by passing this legislation.

**Chairman Yeager:**

Is there any other testimony in support of A.B. 356 either in Carson City or Las Vegas? [There was none.] I will open it up for opposition testimony.

**Jennifer P. Noble, Chief Appellate Deputy, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:**

It has been my pleasure over the past couple of days to work with Assemblyman McCurdy, who I think is so impressive, such a coalition builder, and who recognizes our intent on this bill to be an ally in its goals. That being said, the suggestion by Ms. Feldman that we did not negotiate in good faith or somehow crafted an amendment that was contrary to negotiations and in bad faith, has led me to the decision to withdraw our amendment ([Exhibit G](#)) for

today. We will be happy to continue working with Assemblyman McCurdy down the line. Today we are at the table in opposition with no offered amendment.

**Chairman Yeager:**

Is there any other testimony in opposition to A.B. 356? [There was none.] Is there any neutral testimony on A.B. 356? [There was none.] I will invite Assemblyman McCurdy and Ms. Feldman back to the table for concluding remarks.

**Assemblyman McCurdy:**

I am profoundly grateful for all of you and your time and attention this morning. We heard some very important measures that will take our state in the right direction. It is not always easy bringing people into the room to come up with one solution, but I am very grateful for everyone's time in trying to come to some type of conclusion to continue to advance this piece of legislation. I am very grateful to Mr. and Mrs. Berry for being here. To present this bill has been an honor. I cannot help but think that this really could have been me. I cannot stress that enough coming from where I came from and experiencing the things that I have experienced in my life. Nonetheless, we are here to do good and serve justice. We are here to make sure that this new Nevada that we live in is one that recognizes a second chance for everyone. This is what this bill does. Thank you for time and attention. I urge your support of A.B. 356. Let us continue to do good and serve justice.

**Michelle Feldman:**

I want to thank Assemblyman McCurdy and all of the members who met with us and DeMarco and Odilia Berry and listened to their story. This is the first time that anybody in the state of Nevada has ever apologized to them or even acknowledged what happened. It is so meaningful, and I really want to thank Ms. Noble for keeping the conversation open on this bill. I am confident that we can come up with something that meets the needs.

**Chairman Yeager:**

I will now close the hearing on Assembly Bill 356. As I noted, we are not going to hear Assembly Bill 422 today; look for it on a future agenda. Do we have any public comment either in Carson City or Las Vegas? [There was none.] Committee members, do you have any questions or concerns? [There were none.]

Committee, I want to thank you for your attention. I know that we had a couple of long, emotional hearings this morning. I want to thank those who joined us here in Carson City to provide perspective on the bills. As for tomorrow, we are going to start at 8 a.m. and we have four bills on the agenda. I hate to be the bearer of bad news, but on Monday, April 1, 2019, we will be starting at 8 a.m. rather than 9 a.m. That is not an April Fools' joke.

I think probably from here on out, at least through our first Committee passage deadline on April 12, 2019, you can assume that we will be starting at 8 a.m. almost every day. As we get to the deadline, there will probably be multiple work sessions. For Committee members who have bills that are yet to be on a work session, I want to remind you to get working on

those amendments or whatever you are waiting for so we can process those bills and hopefully we are not here all day and night on April 12.

The meeting is adjourned [at 11:12 a.m.].

RESPECTFULLY SUBMITTED:

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Traci Dory  
Committee Secretary

APPROVED BY:

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Assemblyman Steve Yeager, Chairman

DATE: \_\_\_\_\_

## **EXHIBITS**

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a document proposing amendments to Assembly Bill 267, submitted and presented by Michelle Feldman, State Campaigns Director, Innocence Project.

[Exhibit D](#) is a proposed amendment to Assembly Bill 267, submitted by John T. Jones and Jennifer P. Noble on behalf of the Nevada District Attorneys Association, presented by Jennifer P. Noble, Chief Appellate Deputy, Legislative Liaison, Washoe County District Attorney's Office.

[Exhibit E](#) is written testimony in support of Assembly Bill 267 and Assembly Bill 356, submitted and presented by Michael Cherry, Private Citizen, Las Vegas, Nevada.

[Exhibit F](#) is a document proposing amendments to Assembly Bill 356, submitted by Assemblyman William McCurdy II on behalf of Michelle Feldman, State Campaigns Director, Innocence Project.

[Exhibit G](#) is a proposed amendment to Assembly Bill 356, submitted by John T. Jones and Jennifer P. Noble on behalf of the Nevada District Attorneys Association, presented by Jennifer P. Noble, Chief Appellate Deputy, Legislative Liaison, Washoe County District Attorney's Office.