MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
April 8, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 9:05 a.m. on Monday, April 8, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea 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:

None

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Kristina Wildeveld, Attorney, Nevada Attorneys for Criminal Justice
James L. Dold, President and Founder, Human Rights for Kids, Washington, D.C.
Joe Rodriguez, Private Citizen, Las Vegas, Nevada
Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice
Holly Welborn, Policy Director, American Civil Liberties Union 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
John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's Office; and representing the Nevada District Attorneys Association
Jared Busker, Associate Director, Children's Advocacy Alliance
Savannah Reid, Student, University of California, Berkeley, School of Law
Dagen Downard, Student, University of California, Berkeley, School of Law
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County
Frank W. Cervantes, Director, Department of Juvenile Services, Washoe County
Joseph R. Haas, Psychologist/Administrator, Department of Juvenile Services, Washoe County
John Fudenberg, Coroner, Government Affairs, Office of the Coroner/Medical Examiner, Clark County

Chairman Yeager:
[Roll was called and protocol explained.] We will take the bills in order. I will be presenting the first bill, so at this time I am going to hand the meeting over to Vice Chairwoman Cohen.

[Assemblywoman Cohen assumed the Chair.]

Vice Chairwoman Cohen:
I will open the hearing on Assembly Bill 424.

Assembly Bill 424: Revises provisions relating to parole. (BDR 16-1116)

Assemblyman Steve Yeager, Assembly District No. 9:
I was hoping to have Assemblyman Hambrick joining us from Las Vegas to testify in support of the bill. Unfortunately, he had some medical issues this morning that prevented him from appearing in Las Vegas. As you are all aware, and as we said before, Assemblyman Hambrick has been instrumental in the Legislature for advocating for young people who end up in our criminal justice system. I will get to why Assemblyman Hambrick is important to this bill in just a moment, but I do have at the table with me in Las Vegas, Kristina Wildeveld, who you have heard from in this Committee on other bills, and I know there are other people in Las Vegas who would like to testify in support and help present the bill. In addition, we have Mr. James Dold on the phone with us this morning. You might remember that Mr. Dold testified in front of this Committee earlier in this session on two of Assemblyman Hambrick's bills, both of which we passed out of Committee.

Assemblyman Hambrick, Mr. Dold, and Ms. Wildeveld were among those who were instrumental in helping to pass Assembly Bill 267 of the 78th Session. That is obviously not the bill that you have in front of you today, but Assembly Bill 424 builds upon some of the progress that was made in A.B. 267 of the 78th Session. Before I tell you about that bill, let me tell you that it passed the Legislature by a tally of 63 votes in favor, 0 against. I also had the honor of working on that bill as a lobbyist, not as a legislator, and I was very happy to see Governor Sandoval enact A.B. 267 of the 78th Session.

What did that bill do? It did something critically important. It provided hope to individuals who had committed very serious crimes as juveniles and received life sentences or the equivalent of life sentences. These were individuals who were functionally sentenced to die in prison for things they did when they were not yet adults in the eyes of the law. Assembly Bill 267 of the 78th Session provided that anyone sentenced as a juvenile for a crime that did not result in a death was eligible for parole after 15 years. It also provided that anyone sentenced as a juvenile for a crime that actually resulted in a death would be eligible for parole after 20 years. Again, parole would not be mandatory, but those persons would be eligible for parole. Assembly Bill 267 of the 78th Session, however, did not provide that same opportunity to anyone convicted of a crime where more than one death resulted. This has resulted in odd outcomes where, in some cases, one codefendant who pleaded guilty to one murder has been released but another codefendant in the same case involved in the same acts will never be released under the exclusion that is in the current law because that offender pleaded guilty or was found guilty of multiple deaths rather than one. Ms. Wildeveld will tell you a little more about that and about one particular case where that situation is occurring right now.

The bill in front of you, A.B. 424, makes anyone sentenced as a juvenile eligible for parole at 20 years, even if there was more than one death. Again, we are talking about eligibility, not mandatory release. The parole board would still go through its normal process, assessing risk and hearing input from victims and victims' family members. The bottom line is, there was no logical basis to include the two or more deaths exclusion in the original legislation. As

you will hear from Mr. Dold, juvenile offenders are unique in their ability to be rehabilitated. Mr. Dold will discuss some of the brain science and legal opinions in this regard. To be clear, the individuals this bill would apply to committed egregious crimes, but keep in mind they were committed as juveniles and this bill gives them a chance at parole; it does not guarantee it. That would be entirely at the discretion of the State Board of Parole Commissioners.

Hope is a powerful thing, and we have the power to give hope with A.B. 424. I anticipate that you might want to know how many imprisoned people in Nevada A.B. 424 would apply to. It is hard to know for sure, but our best estimate is somewhere around eight people—eight people who are imprisoned in our state who continue to be excluded under the two-or-more death exclusion in the law; eight people who are now adults. They are still in prison and will spend the rest of their lives there for crimes committed as a juvenile. That is eight individuals with no hope of ever getting out of prison. It is time to do the right thing and give those remaining eight or so hope. I would like to turn it over to Mr. Dold, who is on the phone, to make some additional remarks, and then to Ms. Wildeveld in Las Vegas before we open it up for questions.

Vice Chairwoman Cohen:
I think Mr. Dold is having some trouble, so we need about five minutes. Perhaps we could have someone else speak first, and then we will get to him.

Kristina Wildeveld, Attorney, Nevada Attorneys for Criminal Justice:
I would like to thank this Committee and Chairman Yeager for bringing forth such an important piece of legislation (Exhibit C). I worked very hard on Assembly Bill 267 of the 78th Session to ensure that many of the people convicted for crimes they committed as juveniles would not be forced to spend their lives in prison without having a chance at parole. This bill works to help a small, but important, group of individuals who, unfortunately, were not able to benefit from A.B. 267 of the 78th Session. This bill would strike the portion of *Nevada Revised Statutes* (NRS) 213.12135 that states that the provisions of the statute are not applicable to individuals who are serving sentences for an offense or offenses that resulted in the death of more than person.

There is no rational basis for the current exclusion in the law. The fact remains that, regardless of the number of victims, the people who committed these crimes did so also as juveniles. The United States Supreme Court has determined that it is unconstitutional to sentence a person who committed their crimes or crimes as a juvenile to mandatory life without the possibility of parole or to a sentence that would otherwise constitute mandatory life without the possibility of parole. Those are called "de facto" life without parole. This is true regardless of the crime or crimes the juvenile may have committed and regardless of the number of victims. This is because the juvenile brain is fundamentally different than the adult brain. Juveniles have less of an ability to control their impulses, they struggle to consider the consequences of their behavior, and they are more capable of achieving rehabilitation than their adult counterparts. In fact, studies show that the brain does not fully develop until about the age of 25. It is important that we give people who committed their

crimes as juveniles a chance to prove that they have changed and that they are capable of becoming productive members of society. We should never lock a young person away with no hope that they will ever be released from prison. It is cruel, and it is ineffective at encouraging rehabilitation.

I would like to emphasize that this bill is not a "get out of jail free" card for juvenile offenders. All this bill does is provide a juvenile with the hope that, after serving 20 years in prison, he or she will have the ability to go before a parole board and prove to that board that he or she has changed. This provides those young people with the encouragement and hope they need to reform themselves in prison and to engage in positive activities and behaviors that they are not otherwise eligible to do because of their sentences. When the time comes, they can prove to the board that they are changed persons.

I have submitted letters or introductions from several of my clients (Exhibit D). Tim Webb, Kenshawn Maxey, Colby Becker, and Jason Taylor were all juveniles when they committed their crimes, and they were excluded from A.B. 267 of the 78th Session consideration. Tim Webb was paroled two weeks ago, but he will not be released until June 1, 2019; otherwise, he would have loved to have come before you today to offer testimony in support. While he had two bodies in his case, he was only convicted of one murder; therefore, he was released after 30 years in prison. I have also included the testimony of Dr. Michelle Carro from the 2003 Session who spoke in 2003 about her interactions with Kenshawn Maxey and her work surrounding youthful offenders.

Colby Becker wanted to be here today; unfortunately he was unable. He sent me a text a few minutes ago saying he was disappointed that he could not be here this time. He has five people living in a fifth wheel and he is trying to build their house after work. He is already living week-to-week and he cannot afford to miss the work that he does have. He needs more time to plan and save. Colby Becker was also convicted of a crime which included three murders. His co-defendant, Kyle Ray, committed the crime with him. They were both 15 years old. Colby pled to one murder, and was eligible for parole after 20 years.

Kyle Ray was made to plead to two murders and he will not be paroled until 80 years have been served, which is a de facto life without parole. In the case of Kenshawn Maxey—who was a 16-year-old foster child when his crime was committed—one of the victims in his case was LaShawn Levi, who was a codefendant in the case. The other member was Artis Moore. While Artis will have the opportunity to be released, Kenshawn will never have the opportunity to be released as he is serving life without the possibility of parole. LaShawn Levi's family members support Kenshawn in coming before a parole board one day. LaShawn Levi was the second victim in Kenshawn's case, for which he will never see a parole board.

I hope you will take the time to read some of their words and their summaries that I will be submitting in consideration of this bill. This is an important bill and a step in the right direction towards positive criminal justice reform and for recognizing that teenage brains do not fully develop before the age of 25. You have had the opportunity before to hear from

some previously incarcerated youth. I would submit that I have had the pleasure and honor of working with some of those youth since they have been released. There are success stories out there. They are living lives beyond what anyone would ever dream for them, and those were all kids who were once sentenced to die in prison.

James L. Dold, President and Founder, Human Rights for Kids, Washington, D.C.:
I would like to start off by thanking Chairman Yeager for introducing this important human rights bill on behalf of children in Nevada. I also want to send my thoughts and prayers out to Assemblyman Hambrick. As all of you know and has been mentioned earlier, he has been one of the strongest champions for children's rights in the state and all around the country. We are praying for him and our best wishes go out to him.

I thought I would give a little background about this issue and why this issue is back before the Assembly Committee on Judiciary. There are two ways that I think Committee members can look at this issue. There is the moral lens, which I think the Chairman has laid out, and then there is the legal lens, which played a significant factor into why Assembly Bill 267 of the 78th Session was crafted the way that it was and why this reform is needed at this time to make sure that Nevada is in full compliance with the United States Supreme Court decisions in this area.

In the late 1980s and early 1990s, there was a juvenile crime wave that had happened, and there was a group of criminologists who had theorized at that time that there was a new group of "super predator" children who were coming of age who were more violent and less remorseful than ever before. These children were characterized as being godless, jobless, and fatherless, and state legislatures across the country were urged to pass laws making it easier to transfer children into the adult criminal justice system. At the same time that that was happening, we also saw a spike in the increase of mandatory minimum sentencing, truth in sentencing laws and, of course, the federal 1994 omnibus crime control bill [Violent Crime Control and Law Enforcement Act of 1994], which also encouraged states to pass harsher sentences and to build more prisons to house these individuals. During that time, however, there was really no focus on child status or how children are fundamentally different from adult offenders and how we need to be looking at them differently.

Fast forward about 15 years from that time frame to 2005, and the United States Supreme Court begins to weigh in on the constitutionality of the use of the most extreme and abhorrent sentences imposed upon child defendants. In 2005, in a case called *Roper v. Simmons*, 543 U.S. 551 (2005), the U.S. Supreme Court took up the issue of whether or not children could be sentenced to death. At that time, the court was relying heavily on emerging juvenile brain and behavioral development science that Ms. Wildeveld alluded to, which showed that there were fundamental differences between juvenile and adult brains. Specifically, the prefrontal cortex is not fully developed in children and, as a result, children rely on a more primitive part of their brain known as the amygdala, which results in children being more impetuous, more prone to risk-taking, being more susceptible to peer pressure, and less likely to think through the long-term consequences of their decision-making. Their underdeveloped brain is also one of the reasons why children's personalities are not as well-fixed, which

means they are more amenable to rehabilitation and change over time than adult offenders necessarily are.

The courtroom remarked at the time that this is something that every parent or grandparent knows, but really for the first time, science was being able to show us in real time. Our policies already reflected this reality. It is one of the reasons why we do not let children vote, they cannot serve in the military, they cannot enter into contracts, and there is legislation pending in Nevada to make sure that children under the age of 18 cannot get married. All of these policies reflect a reality that children's brains are not fully developed, they are not capable of making the best decisions, and they make irrational decisions sometimes. This is also exacerbated by children who grew up in horrific, crime-producing settings.

It should come as no surprise that a lot of the children who we see in these sorts of scenarios are kids who have experienced severe early childhood trauma and have great exposure to adverse childhood experiences, which sort of connects all of these issues together. In the studies that have been done about this population, one of the things that becomes apparent is that over 80 percent of the girls who have been sentenced to life without parole were victims of childhood sexual abuse. Close to 40 percent of the boys were also victims of sexual abuse. Over 50 percent of children witnessed domestic violence and violence in their communities on a regular and ongoing basis. That is not to excuse the underlying criminal behavior, but it does help us to understand how children could end up in these situations where they commit these terrible crimes because, in addition to their underdeveloped brains, they are also dealing with these horrific crime-producing settings oftentimes in which they grew up. Against that backdrop, the U.S. Supreme Court found that the penalogical justifications for imposing the harshest possible punishment—in this instance *Roper*, the death penalty—fall away when we consider a child's status. As a result of that, the U.S. Supreme Court struck down the use of the death penalty in 2005, saying it violated the Eighth Amendment's prohibition on cruel and unusual punishment.

Five years later, in a case called *Graham v. Florida*, 560 U.S. 48 (2010), the court again stepped into this area saying that the use of other extreme sentences, such as life without parole for nonhomicide offenses, also violated the Eighth Amendment's prohibition on cruel and unusual punishment. In that case, the court likened juvenile life without parole to the death penalty, because no matter how much a child changes and no matter how much they grow and show that they are a different person today, and no matter how much remorse they express, they will never leave prison alive. Essentially, they will only leave prison in a pine box. For that, the court said that it is a sentence that simply cannot be imposed on children convicted on nonhomicide.

Two years later, in *Miller v. Alabama*, 567 U.S. 460 (2012), the court again struck down the use of mandatory life without parole for children, even those convicted of homicide-related offenses. Again, the court explained that the lack of maturity, and an underdeveloped sense of responsibility, and children being more vulnerable to negative influences and outside pressures lessened the reasons for imposing the harshest possible punishment of life without parole. In the *Miller* decision specifically, the court noted that before a child could be

sentenced to life without parole, a judge had to consider the differences between juveniles and adults, including the child's background and other mitigating factors that caution against imposing a life without parole sentence.

As the *Miller* decision came down, it sent shockwaves across the country and people really began to think about why we impose these harsh sentences on children in the first place. There became a big question about the scope of *Miller's* application. After *Miller* came down, a number of states with what we call "discretionary life without parole sentence"—Nevada being among those states—began to reexamine whether or not that was an appropriate sentence and if it was even legal in light of the *Miller* decision. A number of states had decided that it was not, including South Carolina and Ohio, and we saw other states pass laws in this area, such as West Virginia, that did not have mandatory life without parole.

Against the backdrop in understanding why A.B. 267 of the 78th Session was constructed the way it was, in large part at that time, there was a recognition that the state needed to do something, that these decisions very well may impact the state, and that would mean that there would be costly litigation that would happen as a result because there would be a need to go through and resentence all of the individuals who were impacted by that decision. As we were developing the language around A.B. 267 of the 78th Session, we tried to focus on developing a compromise that took into account the *Miller* decision as well as some of the concerns that were raised at that time.

After A.B. 267 of the 78th Session was passed in 2015, the following year, the U.S. Supreme Court issued another decision, this time in a case called *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016). This decision fundamentally altered our understanding of the *Miller* decision, its application and its scope. I think it is against that backdrop that we have to look at why A.B. 424 is a really important piece of legislation that needs to be passed as a technical amendment and fix A.B. 267 of the 78th Session to make sure that Nevada is in full compliance with the U.S. Supreme Court's decisions in this area.

In *Montgomery v. Louisiana*, the issue that the court was deciding was whether or not the *Miller v. Alabama* decision was meant to be applied retroactively. What was unique about *Montgomery* was that the court actually went pretty broad in its pronouncements of what *Miller* meant and what *Montgomery* meant. I am going to read a couple of lines from this decision because I think it is really important for the context of this conversation. Justice Anthony Kennedy, who wrote the decision, said, "*Miller* determined that sentencing a child to life without parole . . . an unconstitutional penalty for 'a class of defendants because of their status.'" Even if a court considers a child's age before sentencing him or her to a lifetime of prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity. *Miller* did bar life without parole for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. *Miller's* conclusion, that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders, raises a grave risk that many are being held in violation of the *Constitution*.

Montgomery ultimately clarified that the *Miller* decision was very similar to the *Roper v. Simmons* and *Graham v. Florida* decisions that came before it in that it did completely bar life without parole sentences for children, and it made one carve-out exception. If a state can prove that a child is beyond rehabilitation or is permanently incorrigible, then that is an instance where a state could theoretically impose a life without parole sentence. Of course, the complications come in as how does one make that determination? I would submit that it is not possible to actually determine whether or not a child is permanently incorrigible because we never know who a child may grow into. Indeed, when we look around the country at some of the state Supreme Court decisions that have come down in the years since *Montgomery* came down, a lot of the courts have actually sided to this fact that even trained psychologists and clinicians cannot make a determination on whether or not a child is permanently incorrigible or could be rehabilitated over time. The Iowa Supreme Court, for example—and most recently the Washington State Supreme Court—struck down the use of a life without parole sentences completely for child offenders because such a determination under the Eighth Amendment simply cannot be made.

What the U.S. Supreme Court did in *Montgomery* is that it gave states a way to comply with this decision in a way where they would not have to go through a process of resentencing. I am going to read again from Justice Kennedy's opinion. He says, "Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment . . . Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change."

In the years since *Montgomery* has come down, a number of states have also continued to pass laws in this area, which have removed these exclusions, that currently exist within A.B. 267 of the 78th Session, to make sure that every child, including those convicted of multiple homicide offenses, have the opportunity to see the parole board. Up to today, 26 states and the District of Columbia completely ban or no longer use life without parole sentences. These are sentences that run the geographical and political gamut. These are states like West Virginia—in fact, West Virginia was the first state in the country to completely give children, no matter what their offense is, parole eligibility after no more than 15 years. Similarly, Arkansas, which is certainly not a progressive bastion by any stretch, also gives children the opportunity to see the parole board regardless of the number of victims in the case as well.

Again, looking at this through a compliance mechanism, but also through the moral lens, the life without parole sentence is vastly disproportionate for a child offender. That is not to say that every child who commits a serious crime should be released from prison. I will be the first to tell you that there are some individuals who commit serious crimes who should never be released and who will stay in prison for the rest of their life. That is a determination that only the parole board can make after a child's brain has had the opportunity to mature and we have a long record to look at to see what they have done since they have been incarcerated.

I am very proud of Nevada—and I think everyone should be as well—on how the state, particularly under the leadership of the former chairman of the State Board of Parole Commissioners, Connie Bisbee, has gone about implementing A.B. 267 of the 78th Session.

Numerous individuals have received a second chance to come home. One individual—who was 15 years old at the time of his crime—is now married and expecting his first child. These are life-altering laws. I think that what Chairman Yeager is trying to do with A.B. 424 is to make sure that the same rationale that applied to A.B. 267 of the 78th Session is applied to all kids no matter what offense they commit. No child should ever be denied hope or love. That is what we do when we sentence a child to life without parole; we deny them the opportunity of hope and love. That is why A.B. 424 is really important. It is not to say that everyone should get out of prison, but we should at least offer them the opportunity to demonstrate to us that they are a changed person and deserving of a second chance.

That is more of the moral aspect of this. The legal aspect is that we do not want to have to go back into court and relitigate the four cases of individuals who are serving life without parole sentence currently in Nevada, in addition to the other four individuals who are serving what we term de facto life.

I would urge the Committee to pass this bill. When we look at the Bible, it is replete with examples of individuals who were fallen and did some very terrible things but yet went on to serve God in very significant and important ways. Moses, David, and the Apostle Paul were all guilty of murder. I think it is really important to remember and ask ourselves—as we debate these really important pieces of legislation—if our children are not deserving of our mercy, then who amongst us is? With that, I will close my testimony, happy to answer any questions from the Committee, and would urge the Committee to act favorably upon this legislation as a technical amendment fix to A.B. 267 of the 78th Session.

Assemblywoman Krasner:
You said that there are only a handful of these cases in Nevada that resulted in multiple deaths. Would you please tell me what type of cases and what the charges were?

Kristina Wildeveld:
All of the cases that are life without the possibility of parole are de facto life sentences have been murders. The disparity between the sentences is significant. As I indicated with Colby Becker, who was 15 years old, along with Kyle Ray, who was also 15 years old, the victims were all Kyle Ray's family. Colby pled to one murder and Kyle Ray pled to two murders. Kyle Ray will never get out of prison. Colby Becker was released a couple of weeks ago and is married and living a life here in Nevada that is beyond expectation. Kenshawn Maxey was also a double homicide, as one of the victims would have been a codefendant but for the bullet going through the bartender and hitting the codefendant behind him, killing them both. The third codefendant was Artis Moore. Artis Moore is getting relief under A.B. 267 of the 78th Session. Kenshawn Maxey will never get relief. Tim Webb—he has a supporter here today who will be testifying after me—was also a double homicide. The driver of that vehicle, who was an adult, was found not guilty. Tim Webb was serving 30 years in prison.

The third codefendant was released after a short amount of time. I can give you a synopsis of the other individuals, but I will leave it to you.

Assemblyman Edwards:
This bill would make Nevada law consistent with three U.S. Supreme Court cases, correct?

Assemblyman Yeager:
That is correct. One of the things we are trying to do is prevent litigation, because I think the case that came out after the 2015 Session at least suggests, if not expressly states, that the exclusion that exists in the law for two murders would be unconstitutional.

Assemblyman Edwards:
So even though they would be eligible if they are, in fact, some of the incorrigible ones who have not demonstrated any kind of growth or rehabilitation, they would still be left in jail?

Assemblyman Yeager:
You are correct. This bill allows someone to come before the parole board but there is no mandatory release at any point in the process, and typically what the parole board would do is, if they reject someone, that person would be typically rolled at least a couple of years, if not longer, before coming before the parole board again.

Just as a matter of note, since A.B. 267 of the 78th Session went into effect, as you might imagine, I receive a lot of letters from inmates and some of those letters come from inmates who have been released who are saying they are thankful for the opportunity, but many of them come from people who have not been released by the parole board, essentially asking for help in being released. Of course, my response to that is, That is the process, and you will have to continue to go before the board for as long as it takes, and you may never get out.

Neither A.B. 267 of the 78th Session nor A.B. 424 makes release mandatory for anyone.

Assemblywoman Tolles:
I toured the Northern Nevada correctional facility a couple of years ago and had an impromptu focus group with some of the inmates there and met one of the individuals that would be positively impacted by this bill if it passes. I am generally in favor of it. Do we have any examples where individuals were released and then went on to commit more murders?

Assemblyman Yeager:
There certainly have not been any in Nevada. I cannot speak to other states. I am not sure if Mr. Dold or Ms. Wildeveld know of any, so I would defer to them if they know the experience in other states. In Nevada, we have not had any recidivism from those who have been released.

James Dold:
I think what is amazing, when I think about all these reforms and the U.S. Supreme Court decisions from across the country, is the fact that we have a zero percent recidivism rate. There have been more than 500 individuals released across the country safely back into the community. They are doing incredible things—one of the things that they feel a great responsibility for is giving back because they know, no matter what they do, they can never make up for the life they took. One of the things that we see them do is actually go back into some of these horrific crime-producing settings where they came from and actually talk to young people into going to juvenile detention facilities.

Just as an anecdotal example, I spent last summer touring three prisons in the state of Arkansas. I had a chance to go back in with the former juvenile lifer there, Laura Berry, and we met with a number of kids—about 15 or 20—who would be housed under the adult facility, and we had a chance to just talk with them about their potential for change and expressed to them that we loved them and that we cared about them and that they were more than where they were and they could be more. There is a positive example of hope that I think these formerly incarcerated youth are giving to other youth who are in the system or at-risk youth across the country. They have been incredible citizens giving back and trying to make amends for the terrible crimes they have committed. One of the most incredible things about all of this is that none of them, to my knowledge, have recidivated, and we have had hundreds of individuals across the country.

Assemblywoman Tolles:
Thank you for that information. I know that he left a particular impression on me and made a great case for why this is important.

Vice Chairwoman Cohen:
Are there any other questions? [There were none.] Is there anyone in support of A.B. 424 in Las Vegas or Carson City?

Joe Rodriguez, Private Citizen, Las Vegas, Nevada:
I am a friend of Timothy Webb, whom Kristina spoke about. He is currently in prison after serving more than 29 years for a crime that he committed at age 17. Timothy was granted parole last month and will be released in June of this year at age 47. According to the University of Rochester Medical Center, the rational part of the teen's brain is not fully developed until the age of 25 or so. I stay in touch with Timothy by phone. We talk just about daily. Timothy will come live in my home when he is paroled. We have a close relationship and we have had many conversations over the years. He told me many times when he wakes up every morning, he thinks about the people who were hurt by his actions and that he wishes he could take it all back. I counseled him that life does not allow us to go back and fix what we have done wrong in the past, but it does allow us to live each day better than the last. I asked him to look to the future so that he can heal and do better. There is a change that took place in Timothy. He is no longer burdened by the heavy weight of his sentence. There is a brighter future ahead and he has the desire for it. This was key to his turning himself around. His mature mind could now deal with the possible reality before him

and he could change himself. I should emphasize that the inmate needs to have the desire to change, and Timothy has the desire to do good, if not great, things.

In prison he was labeled a possible Aryan warrior and I have not seen anything of that. I am Hispanic and I have had a great relationship with him and his mother. I have never seen any of that in his family. I understand that when you are young and in prison, you have to choose a side for protection and survival. That is because there is a war going on all the time and if you are 17 years old, you do what you have to do to survive. That is where I believe the Aryan warrior label came from. Had Timothy been released after 20 years of prison, he would have been 38 years old. That would be 13 years past his full mental maturity, which should occur around age 25. I met him when he was 30 years old and that change was ready to happen. He needed some hope in his life, hope for a brighter future. That is what I instilled in him. But no one in the prison system noticed him at this mental maturation. He was hardworking, he wanted to program, and even when he was accepted into a class or program, he would be pulled out of that program at the whim of the administration. Again, had Timothy been released at 20 years of incarceration, he would have been home two years before his mother's passing. Instead, I was left to handle the final arrangements and disposition of her estate. Additionally, he would have had eight full years to reconnect with his only living parent, his father in New York. He, too, passed.

In summary, we as a society need to be aware what is going on with prisoners. Twenty years is a long time to be in prison. Anything more than that risks breaking down that person and the degradation of their support system. I personally witnessed that with Timothy. Had I not been there for him to help him and encourage him to build his support system, who knows how Timothy would have ended up with both of his parents gone. Thank you for your time.

Assemblywoman Krasner:
You used the term "Aryan warrior." What does that term mean?

Joe Rodriguez:
White supremacist.

Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice:
I want to respond to a couple of the questions that were asked. One of the questions Assemblywoman Krasner asked was what kind of cases these are. I think a more succinct response to that is, to my knowledge, all eight of the actual people who received two murder sentences are all one incident. I think that is probably what you are asking. There is Kenshawn Maxey, as Ms. Wildeveld described, was all one incident. I have another client, Michael Dominguez, all one incident. These are incidents where more than one person was killed, but it is all the same incident. It is not an incident here and then two months later another incident. I think that is an important distinction, and that is the way the cases that we are looking at in Nevada are.

Mr. Dold is so elegant and eloquent in his advocacy of juveniles, but this is an issue that we dealt with in 2015. It is such an important issue for our state to not only come into

compliance with current U.S. Supreme Court case law, but to recognize that these kids who are left out of the 2015 legislation are no more dangerous than the kids who were included in the 2015 legislation. I think that is an important factor. I would encourage all of you to support this bill for that reason. They were still children. The fact that two people died makes it worse, but it does not speak to their dangerousness.

I also want to briefly address the fact that it is not mandatory. In fact, I have a client who I have advocated for twice before the parole board, and he has not been released. They felt that he could be doing additional things, and he is working on those things. Not everyone who has been eligible who has appeared before the parole board has been released. There are still a lot of checks and balances and this does not guarantee anything but, as Chairman Yeager said, it provides hope. There are currently now some of these juveniles who are not able to program and do other things that they would be able to do with the passage of this bill. That would give them a potential path, not a guaranteed path. I encourage your support on behalf of Nevada Attorneys for Criminal Justice.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
We are here in strong support of this bill. We were part of a working group after A.B. 267 of the 78th Session passed. It was a group of about 20 attorneys who came together to offer pro bono counsel to some of the individuals who were applicable for parole under the new law. Since that time, as of February 2, 2018, Connie Bisbee, the chair of the parole board at the time, reported to the Advisory Commission on the Administration of Justice that the current release rate was 52 percent. I believe that the current release rate for adult inmates is about 65 to 67 percent. I could be incorrect about that. It is about 45 individuals who were released under A.B. 267 of the 78th Session. Some of the reasons cited for not releasing those individuals were for what Ms. Rasmussen just stated—they had not been programming and, because they were on a life parole sentence, they did not have programming, educational opportunities, housing placement, et cetera, to be successful outside of prison. We are currently working in a variety of settings and circumstances to make sure that people have that type of programming very early on in their sentence.

I want to state on the record that it is the position of the American Civil Liberties Union of Nevada that the current state of the law is in conflict with the U.S. Supreme Court precedent since the *Montgomery v. Louisiana* decision. We think that the threshold showing is quite impossible to reach because of juvenile brain development. It mitigates the risk of harm for being released to the community and also demonstrates that a child is far more likely to be rehabilitated if they have that programming early on in their prison sentence.

The current mechanism that we had used for some of the individuals that were not eligible for A.B. 267 of the 78th Session was a motion to correct an illegal sentence. I had the privilege of working with Johnny Ray Luckett on his motion to correct an illegal sentence. I am not sure what the disposition of that is at this time, but it can be very nuanced and difficult to show that. That is why we need to make a change in the law to make it consistent with U.S. Supreme Court precedent and to also correct what we find to be one of the most serious injustices in our law.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
Everything that needed to be said has already been said, so we will just say that we support this bill.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
We want to thank the sponsors for bringing this important legislation forward and especially Chairman Yeager for bringing this forward to ensure that Nevada is compliant with U.S. Supreme Court cases. We would note that—as eloquently stated by Mr. Dold—at the time when most of these individuals entered into the prison system, their only thought was that they would be leaving prison in a pine box. I think the image he created is very important to reiterate and realize, that that is the situation that these kids came into prison thinking, that there is no way out—and just the weight that the only escape is death; it does not allow them any glimmer of hope. That is what this bill provides just a glimmer of hope that, Yes, I should finish and get a high school diploma. Yes, I should work on treatment. Yes, I should work on anything to ensure that if there is a hope, a chance that I could be released on parole, that I have what is needed in order to be successful. We appreciate providing this glimmer of hope.

Vice Chairwoman Cohen:
Is there anyone else in support in Carson City or Las Vegas? [There was no one.] Is there anyone in opposition in Carson City or Las Vegas on A.B. 424?

John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's Office; and representing the Nevada District Attorneys Association:
I want to thank Chairman Yeager, as I had a brief opportunity to meet with him. I was a little late coming to him, and I want to apologize to him for that. We are in opposition to this bill for numerous reasons. It has been conveyed to this Committee that this bill will help us get in compliance with four recent U.S. Supreme Court decisions. It is the position of the Nevada District Attorneys Association (NDAA) that that is not the case. *Montgomery v. Louisiana* and prior to that, *Miller v. Alabama*—what they prohibited were mandatory juvenile life without the possibility of parole cases: in other words, where a judge did not have any discretion but to give that juvenile a life without the possibility of parole sentence. That is not what we have in Nevada. In Nevada, a judge always has discretion when you are talking about first-degree murder, or a jury, depending on who the ultimate determiner of fact was on a range of sentencing. Examples of sentences that a judge can give include 20 to 50 years in prison, 20 to life with the possibility of parole, or 20 to life without the possibility of parole. We are already in compliance in terms that we do not have mandatory life without parole in this state. Thus, the reason for this bill, quite frankly, does not make much sense to us.

I want to talk about another issue that is of equal importance, which is that a defendant at sentencing was given a sentence by a judge, and a judge says, I am going to sentence you to X sentence. That is what the defendant expected. This bill undercuts what the judge gave

the defendant. Potentially, prior to the term of incarceration put into place by the judge, a defendant could get a notice of parole, and because of that, it is one of the reasons we are opposed to this bill.

I want to point out NRS 176.017, which is a bill that was recently put into effect that requires a judge to consider the differences between adult and a juvenile offender. That is a bill that we did put into law two sessions ago along with A.B. 267 of the 78th Session that allows a judge to consider a youthful offender in their youth and compare that to an adult when rendering a sentence. In terms of Nevada, the NDAA feels that we have become in compliance with these four decisions and that no more legislation is needed.

I was part of the group that put together the coalition with A.B. 267 of the 78th Session. I worked with Chairman Yeager and others. This was the compromise—the current language in statute that we all agreed to—and because of that, I ask you not to pass A.B. 424.

Assemblywoman Hansen:
I am a little confused. We have some parties saying that Nevada law is not consistent with the U.S. Supreme Court, but your contention is that we are. In that working group of attorneys, were the majority on board? Did you just say that you were part of the group of attorneys that Ms. Welborn mentioned?

John Jones:
I am not sure what group of attorneys it was that Ms. Welborn mentioned. I was part of the group that worked on A.B. 267 of the 78th Session. The language that is currently in statute is a compromise that we came up with respect to the changes in statute.

Miller v. Alabama dealt with mandatory life without parole. In other words, instances in which a judge had to sentence a juvenile to life without parole and had no discretion. In that case, the court said that mandatory schemes, with respect to juveniles, are unconstitutional. A judge should, and, in this case, must, consider factors including the differences between adults and juveniles when rendering a sentence. What *Montgomery v. Louisiana* said is that any juvenile who was subject to a mandatory life without parole scheme and who was sentenced to mandatory life without parole basically has to be given a meaningful opportunity for release. Again, I submit to you that Nevada does not have mandatory life without parole and thus, those cases do not apply.

Assemblywoman Hansen:
If you do not mind, maybe we will follow up offline so that I can get a little clarity for myself.

Holly Welborn:
I am referring to a working group of attorneys who did some work on the bill with Mr. Jones during the legislative session, but this particular group was a group of defense attorneys and others who came together just purely to provide pro bono counsel to the individuals eligible under A.B. 267 of the 78th Session.

Vice Chairwoman Cohen:
Thank you for that clarification. Is there anyone else in opposition? [There was no one.] Is there anyone in neutral in Carson City or Las Vegas on A.B. 424? [There was no one.]

Assemblyman Yeager:
I will respectfully disagree with Mr. Jones. I do not think we are in compliance with Supreme Court precedent. I will read one sentence from the *Graham* opinion. It says that the parole board is responsible for providing an inmate sentenced for offenses committed as a youth a meaningful opportunity for release to demonstrate that the bad acts he committed as a teenager are not representative of his true character. When we have individuals who, because of the crimes they were convicted of, have multiple sentences stacked one upon another where they are 30 years old and still have 80 more years to go, I would suggest to this Committee that that is not a meaningful opportunity for release. I guess the bottom line is that attorneys could disagree on this, but why go through the hassle of litigating it when we can solve the issue with A.B. 424. Beyond that, as you have heard, this is not just a legal imperative; it is a moral imperative. It is a policy decision for this Committee and this Legislature about whether we believe young people can be rehabilitated.

For a moment, think about if you were to be sentenced to prison as a juvenile and you come in at 15, 16, 17 years old, and you have absolutely no chance of ever being released from prison versus if you had a chance. How is that going to change your outlook on programming, taking classes in prison, your outlook on trying to better yourself, your outlook of trying to be compliant? I think those scenarios are two very different scenarios. It is about hope. It is about giving juveniles the hope of being released some day.

I want to thank all those who worked so hard on A.B. 267 of the 78th Session. You have heard from many of them today. I particularly want to recognize Mr. Dold, who has made it his life's work to focus on juvenile and child issues, Ms. Wildeveld, and Ms. Rasmussen who have represented some of these individuals. I want to thank Mr. Jones and his colleagues. A.B. 267 of the 78th Session was a consensus piece of legislation and I certainly want to recognize Assemblyman Hambrick. I am very sad that he could not be here with us this morning, but his legacy is certainly going to be one of looking out for children and children involved in the criminal justice system. I would ask this Committee to pass A.B. 424 to add to the already impressive legacy that Assemblyman Hambrick is going to leave with this Legislature.

[(Exhibit E) was submitted but not discussed and will become part of the record.]

Vice Chairwoman Cohen:
With that, I will conclude the hearing on A.B. 424.

[Assemblyman Yeager reassumed the Chair.]

Chairman Yeager:
I will now open the hearing on Assembly Bill 439.

Assembly Bill 439: Eliminates the imposition of certain fees, costs and administrative assessments in juvenile proceedings. (BDR 5-1093)

Jared Busker, Associate Director, Children's Advocacy Alliance:
I have Mr. Downard and Ms. Reid, who are native Nevadans and current law students at University of California, Berkeley, School of Law's Policy Advocacy Clinic, with me today. Before I begin, I would like to thank the Chairman and the Committee for hearing this important legislation. I would also like to thank Washoe County, Clark County, Nevada Association of Counties, and Nevada Association of Juvenile Justice Administrators for working together with us during the interim and also leading up to this hearing to try to make sure that this legislation is correct. We are actively working on putting forward amendments to this legislation. I submitted a friendly amendment late last night (Exhibit F) and we will be adjusting that amendment after the hearing today as we continue to work out all the kinks in this legislation.

During the last legislative session, the Children's Advocacy Alliance worked with Assemblywoman Monroe-Moreno to pass Assembly Bill 180 of the 79th Session, which created the Juvenile Justice Bill of Rights. Through the work passing this legislation, there were discussions regarding the current process that the state had to assess and collect fees. Around that same time, the Kenny Guinn Center for Policy Priorities released an in-depth look at the costs the Nevada juvenile court system places on youth and their families. They are also looking deeper nationally at these policies as well. From this, the Children's Advocacy Alliance partnered with the Policy Advocacy Clinic at Berkeley Law to conduct an analysis of the fees collected in our state. From this analysis, which Mr. Downard and Ms. Reid will explain in more detail, we found that the state was either waiving or not collecting the majority of the fees from youth due to the families' inability to pay, and the amount collected was insignificant overall in the state.

There was also a lack of consistency amongst how, from whom, and for which programs the fees were collected throughout every single county. National and state research shows that these fees result in low revenue, high harm, and economically and racially disparate outcomes among our youth. The Children's Advocacy Alliance believes that for these reasons, Nevada should no longer assess any fees to children in the juvenile justice system.

In bringing forward Assembly Bill 439, the intent is only to remove those fees, not to make any legislative changes to the fines or restitution that these youth and families would have to repay.

Savannah Reid, Student, University of California, Berkeley, School of Law:
I am a second-year law student at University of California, Berkeley, School of Law where I am working in the Policy Advocacy Clinic. I am also a third-generation Nevadan; I was born and raised in Las Vegas, went to Green Valley High School, and I hope to return here after law school.

We are here with our local partner, the Children's Advocacy Alliance, to tell you more about the issue of juvenile fees in Nevada. Our organization has been working on juvenile fees since 2013. With local, state, and national stakeholders, we have studied juvenile fee practices and outcomes across the country. Today, we are going to describe what we have learned about the issue here in Nevada, including presenting data we have gathered over the last few months. We will tell you more about what is happening nationally and describe a few amendments that have been proposed after conversations with local stakeholders.

Before getting into what is happening in Nevada, we want to be clear about what we mean when we say juvenile fees (Exhibit G). We generally categorize juvenile monetary sanctions into three broad categories. The first is fees, which are typically authorized to permit local jurisdictions to charge youth and/or their families for costs incurred in the juvenile system.

The second is fines, which are meant to punish youth or their parents for their actions, often in lieu of detention as a means of accountability. The third is restitution, which is increasingly provided for in state constitutions—such as the recent passage of Marsy's Law here—and is meant to make victims whole. While punitive fines and victim restitution are important issues, A.B. 439 is focused only on juvenile fees.

The issue of juvenile fees came to national attention in 2014, when the events in Ferguson, Missouri, brought to light the issue of municipal fines and fees in the adult system. In 2016, the Juvenile Law Center issued a national report cataloguing the extent of juvenile fees in all 50 states, including Nevada [page 3, (Exhibit G)]. In a companion study to the report, criminologists found that juvenile fees imposed on system-involved youth increase recidivism. In our research, we found that juvenile fees harm families and undermine youth rehabilitation. Across the country, many counties generate little or no net revenue from the fees after collection costs, because the vast majority of families in the system are too poor to pay them.

I will briefly describe what fees are currently being authorized by state law and what fees A.B. 439 would impact [page 4, (Exhibit G)]. First, it is important to note that Nevada state law authorizes, but does not require, local jurisdictions to charge juvenile fees. After speaking to chief juvenile probation officers in every county, we learned that practices vary widely. At nearly every point in the juvenile system, courts are allowed to charge a young person and their family fees. When a young person is referred to juvenile court, they can face a host of court costs, including for things like investigation fees, witness, and transportation costs. Often youth will be assigned a "free" public defender to their case and they can then be charged a fee for representation by counsel. If a youth is ordered to be held in a county or state detention facility, their families can be charged fees for detention costs, including costs of care. Courts can also order evaluations and treatments, such as drug testing and other medical testing that families without insurance can also be required to pay for.

Furthermore, if a youth is released on probation supervision or required to participate in court programs, a family can be assessed a fee for their child's participation in that program.

Finally, as part of a court order, a youth may be automatically assessed a $10 administrative assessment fee on top of any fine. Assembly Bill 439 would end the assessment of all the fees just mentioned. What is the impact of charging these fees to youth and families in Nevada? After speaking with stakeholders, we found that these fees generate low revenue, are racially disparate, and cause high harm.

Juvenile fee collection rates and net revenue are low because most families with youth in the system cannot afford to pay [page 5]. By way of example, in fiscal year 2017-2018, the Division of Child and Family Services (DCFS) within the Department of Health and Human Services collected less than $8,000 in juvenile fees statewide, Clark County reported less than $24,000, the Eleventh Judicial District less than $3,000, and Lyon County less than $2,000. Based on data reported to us by more than half of Nevada counties, the total amount of juvenile fees collected this same fiscal year was $103,686, $32,000 of which comprised administrative assessments. Further, we have seen that counties often spend significant resources trying to assess and collect these fees. For example, DCFS reported paying one administrative assistant half-time to collect the $8,000 that it receives from juvenile fees annually.

I will now turn it over to Mr. Downard, who will describe the racial disparities and high harm of juvenile fees as well as the issue nationally.

Dagen Downard, Student, University of California, Berkeley, School of Law:
I am also a Nevadan and a law student at University of California, Berkeley Law. I was born and raised in Battle Mountain, Nevada, and graduated from Battle Mountain High School.

Although we do not have the collection data by race in Nevada, juvenile fees generally fall hardest on poor families and families of color [page 6, (Exhibit G)]. According to data from the Juvenile Justice Programs Office within DCFS, black youth are overrepresented at every stage of the juvenile justice process. In 2017, black youth were three times more likely than white youth to be arrested and placed in county detention, and six times more likely to be placed in state confinement.

Studies across the country have found that juvenile fees harm families and increase recidivism, undermining youth rehabilitation and public safety [page 7]. In Nevada, failure to pay fees exposes vulnerable families to a variety of statutorily created consequences. This includes collection actions, negative credit scores, contempt of court, driver's license suspension, prevention of record sealing, and criminal liability. Some stakeholders have suggested an ability to pay procedure, but we have found that this process is just as problematic.

All jurisdictions that have pursued juvenile fee reform have opted to repeal all fees and not institute ability to pay processes because, in practice, counties end up either improperly charging low-income families and netting little revenue, or they spend significant resources to fairly assess families' inability to pay and net even less.

As you all know, Nevada has been very focused in recent years on juvenile justice reform. In 2016, the Guinn Center in Las Vegas documented the costs to youth and their families involved in the juvenile justice system [page 8]. In March 2017, the Nevada Advisory Committee to the U.S. Commission on Civil Rights convened public meetings in Las Vegas and Reno to hear testimony from juvenile justice stakeholders about the racially disparate impact of fees.

Nationally, many organizations have also focused on the negative impact of juvenile fees. As noted here, national associations of state court administrators, state chief justices, state legislatures, state public defenders, and the American Bar Association have all called for the reduction or elimination of juvenile fees [page 9]. Of particular note, the Reno-based National Council of Juvenile and Family Court Judges issued a resolution last year to encourage judges and legislators to eliminate fees and costs in juvenile courts, which create unnecessary family hardship and undermine both rehabilitation and public safety. Joey Orduna Hastings (Exhibit H) and Judge Eagan Walker (Exhibit I), cochairs of The National Council of Juvenile and Family Court Judges, submitted letters of support.

It is for these reasons that jurisdictions that have recently reformed practices have eliminated juvenile fees [page 10, (Exhibit G)]. In 2017, the California state legislature abolished all juvenile fees, and Philadelphia, Pennsylvania, and Johnson County, Kansas, followed suit. Just last year, New Orleans; Madison, Wisconsin; and Delaware County, Ohio, continued this national trend by ending juvenile fees. We hope Nevada will be the next jurisdiction to end this practice.

It is important to note that in drafting this legislation, we worked with people around the state to clarify the intent and scope of the bill—eliminating juvenile fees but not fines or restitution. We are very grateful to these people for their willingness to speak with us. In these conversations, we have found some problems in the legislation as drafted, and we have begun to correct those problems in the updated language we submitted to the Committee.

Sections 2, 9, 13, and 15 of the original language have been amended to reflect concerns about billing for medical services. Sections 4, 7, and 12 of the original language have been amended to require any policy for insurance against liability or industrial insurance be provided by the program in which the child participates. We are still working with counties to ensure this language is accurate.

Thank you for this opportunity to present research on this issue, and we are happy to answer any questions that you may have [page 16].

Chairman Yeager:
I certainly hope that the two of you decide to come back to Nevada as you start your legal careers. It would be an honor to have you back here in the state.

Are you two involved in a clinic of some sort at law school that was the genesis of this bill? Would you let the Committee know some of your work at your law school that brought you to this point?

Dagen Downard:
Savannah Reid and I are students at the Policy Advocacy Clinic at University of California, Berkeley, and we both started there last semester. Did you also want to know generally other work?

Chairman Yeager:
I wondered if you could give us a sense of the kind of work that clinic does which ultimately brought you here today to help present A.B. 439. I know we have had some discussions about it, but I thought you might like to tell the Committee a little bit about what the clinic does and what the focus is.

Dagen Downard:
The Policy Advocacy Clinic did research in California and New Orleans Parish on juvenile fees and their harm to families and youth. They supported legislation in California to end the assessment of juvenile fees, and they also supported doing such in New Orleans Parish. They have been doing this work since 2013.

Assemblywoman Nguyen:
In talking with some of my colleagues who work with foster children or kids who are deemed wards of the state, do you know if it is the state that is—in addition to prosecuting them and requesting these fees—now paying those fees as it currently stands?

Savannah Reid:
This legislation would only affect delinquencies, not dependencies.

Assemblywoman Nguyen:
I am talking about those individuals who are in the foster care system and also committing juvenile offenses.

Savannah Reid:
If they are dual-status youth and they are being charged fees at the state level, we have often found that they are not collecting on these assessments, so then the state would be paying. Yes, if they are a dependency youth, the state would be paying. In some sections, the statute has the youth paying, but assuming that these youth cannot pay, then it would be the state paying.

Chairman Yeager:
I imagine that we have some other people in the room who might be testifying that might be able to shed more light on that question. For other people who might be testifying, if you could help with that question when you come up, that would be helpful to the Committee.

Assemblywoman Cohen:
I have a question about section 7, and I think throughout there is reference to the industrial insurance when a juvenile is performing community service. Who is responsible? If the bill passes as amended, who will be responsible if the juvenile causes an injury while performing community service?

Dagan Downard:
As far as it is amended right now, the industrial and liability insurance would be provided through the program in which they are working or, if they are doing work through restitution, by that entity. If a child was injured, then theoretically that insurance would already be in existence and would cover any sort of harm that happened. I am not sure if that answers your question.

Assemblywoman Cohen:
If the actions of the juvenile causes the injury to a member of the public, is it the same thing?

Dagan Downard:
I do not have an answer to that at this time, but I would be happy to do more research and get back to you.

Assemblywoman Cohen:
In section 14 of the original bill, there is reference to the child's ability to drive and changing it so that a child would not be responsible for paying for a device on their vehicle, and that that would no longer be their parents' or their responsibility. That was a little surprising to me because driving is a privilege. Would you please address that?

Savannah Reid:
This is one of the sections we are still working to amend. We are still working through it to figure out how that would work out, so I do not think we have an answer at this time.

Assemblyman Roberts:
In your amendment (Exhibit F), you added back in the ability for the counties to bill private insurance for a variety of things. Would the premise be, if they did not have insurance, then the county would still pick up the tab for that? Does it just allow them to recoup monies from insurance if they do have insurance?

Dagan Downard:
We are currently still working that out. At this point, our understanding is, they would have the ability to bill public or private insurance, but if the family did not have private or public insurance, then that would ultimately fall back into the county. We are still in conversations to figure out if there is more that we can do to clarify that process.

Assemblyman Roberts:
In your research, from jurisdictions that have taken this away and you leave the option for the insurance in, is that deterred? I would be fearful if that might deter some juvenile judges

from putting people in different programs for fear they would not have the ability to even fund them. I do not know if you saw that in other jurisdictions or if it had any impact at all. Would you shed some light on that?

Savannah Reid:
I think because so little is being collected, the county is already paying for those. Also, given the purpose of the juvenile system—which is rehabilitation—I think the hope is that the programs will still be in effect for the youth that need them.

Jared Busker:
We are looking into language, for the medical charges, that would limit the scope to be within the recommendations of the counties or within their network. If they recommend a child goes to X provider and the parent chooses to go to a different provider or has a preference for a different provider out of network or out of the purview of the court, the state or the county would not be responsible for that instance. It would be within their recommendations.

Chairman Yeager:
Are there any additional questions from Committee members? [There were none.] I will open it up for additional testimony in support. Is there anyone in Carson City who would like to testify in support of A.B. 439?

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
Most of what I was going to mention on the record has already been stated through the excellent presentation we heard this morning. We fully concur with the testimony that was given by the Honorable Egan Walker (Exhibit I) and Ms. Orduna Hastings (Exhibit H). I just saw the amendment (Exhibit F) this morning. It is the position of the American Civil Liberties Union of Nevada and most child advocates through the National Juvenile Justice Network and several other organizations that were stated today that the system should assume full responsibility for the cost, especially when a child is placed in a facility rather than a community-based program, which is what we advocate for. We understand that through these processes and the way our state is set up and some of the shortcomings in our system that sometimes these compromises have to be made, but that is the position we have.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We are in full support.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
We think it is very important to ensure that our families do not dig themselves deeper into the criminal justice system just through these fines and fees.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
We want to echo the sentiments of everyone who spoke before us and say that these fees undermine the purpose of the system by continuing to harm vulnerable families who cannot afford to pay them, so we ask you to support the bill.

Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice:
I am just going to say ditto to everyone else who spoke before me. I think the presenters did a great job on the bill and Nevada Attorneys for Criminal Justice completely supports it.

Chairman Yeager:
Is there anyone else in support? [There was no one.] I want to let the Committee members and members of the public know that there are additional letters in support that are available on the Nevada Electronic Legislative Information System. They have been referenced this morning, particularly one from Judge Egan Walker and one from the National Council of Juvenile and Family Court Judges.

Is there anyone in Carson City or Las Vegas in opposition to A.B. 439?

Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County:
I want to clarify, before I turn it over to my subject matter experts, we support the intent of the legislation. We very much appreciate the proponents of the bill working with us on some of these final clerical changes that are necessary to ensure that we are able to help the large number of juveniles who come to us and need that assistance. We will continue working with them. Again, we do support the intent, but there are a couple of changes that we are seeking.

Frank W. Cervantes, Director, Department of Juvenile Services, Washoe County:
As Jamie indicated, we are supporting the intent of this bill. There are some nuances within the bill; some of those were brought up a moment ago by some of the staff about ancillary fees being distinct from fees and fines that affect kids and how they are processed through the juvenile justice system. In sections 13, 15, and 19, it speaks to how we access and fund psychological evaluation and treatment. Currently, most kids in the system get these services paid for through the county through a source of blending of resources. We use either general funds through the county, we have block grants through the state of Nevada, and we have Medicaid. We use those in a fashion that helps us provide the service to each of the kids. Some of the language that we are working with the sponsors to clean up, I think we could arrange or coordinate that to alleviate some of the responsibility of the county.

An example would be, if a parent has insurance and a young person comes into a facility with a preexisting condition—such as physical therapy—and their insurance provider is paying for that, I am not certain if the best route is to have the county assume those costs for physical therapy for ongoing care. We have a lot of kids who get several mental health evaluations throughout the course of their time on juvenile probation or parole. In that, there are follow-ups and treatment recommendations. When we use county providers or contract

providers, it is limited in scope. There could be an occasion where a family may not like the provider list or the contract providers that we are offering and choose to go outside of that and get secondary and tertiary opinions, which would really impact the budgets that we currently utilize to support those types of programs. I think we are okay with the intent of the bill. I would like to go in with the sponsors to clean up some of the language around how that ancillary funding is actually paid for.

Joseph R. Haas, Psychologist/Administrator, Department of Juvenile Services, Washoe County:
Having worked in the public mental health system with state and county since 1990, I can tell you that the system that is currently in effect for kids with the most serious needs is a bit of a house of cards and requires a complex interplay between county, state, Medicaid, and the parents' private insurance. We are in support generally of this legislation and we provide kids and family services in almost every case at no cost to the families currently. The way the legislation is written currently—we are working with the sponsors—suggests that the county bills Medicaid and bills private insurance. Actually, that relationship is between the parents and the family and the facility the kids go to. We would like to clarify that.

In addition, it would be very helpful if the legislation supported—as Mr. Busker indicated earlier—a provider pool of contractors or a restriction that kids would go to facilities that are supported by Medicaid. Currently, if a child comes into detention, and oftentimes they come in for behaviors that are very much related to a preexisting mental health condition, and that child is in need of residential treatment that is in fact not supported by their insurance, we can get the Medicaid to support that treatment afterwards. If they have private insurance, the policy rightly in place now insists that the private insurance is billed. We want to make sure that the legislation, as it states that parents would not be responsible for payment, does not include that their insurance would not be able to be used to support this. In summary, we support this bill and want to continue helping kids at no cost to families but do it within a structure that is best for families, children, and the counties.

Chairman Yeager:
Are there any questions from Committee members? [There were none.] I want to thank you for your testimony and thank you for working on this. I know everyone was hard at work over the weekend on this piece of legislation and I appreciate the updates. I want to encourage you to keep working because it sounds like we are almost there. Let us see if we can cross the finish line together on this piece of legislation. Thank you again for your advocacy.

Frank Cervantes:
I would like to thank the proponents on the bill for working with us on this important bill to help clean up some of the important nuances.

Chairman Yeager:
Is there any additional opposition testimony either in Carson City or Las Vegas? [There was none.] Is there anyone in neutral on A.B. 439?

John Fudenberg, Coroner, Government Affairs, Office of the Coroner/Medical Examiner, Clark County:
Clark County is neutral on A.B. 439. We understand and support the intent of the bill, but I would like to clarify a few things for the record. In section 17, subsection 6, the bill is eliminating the ability for the coroner to collect fees for the coroner visitation program when the juvenile is referred to the program by juvenile court. We have a significant number of additional juveniles who attend our program that do pay the $45 fees who are referred to our program through municipal and justice traffic court. I believe the intent of the proponents of the bill is to not eliminate the fee for all juveniles—only the juveniles who are referred to our program by juvenile court. I want to clarify that because our program may go away if we eliminate all of the fees for the traffic courts. We believe it is a very good program. A third party did an audit of all the juvenile programs some time ago and our program demonstrated the lowest recidivism rate in the state for youth programs. We are very proud of the program and do not want to see it go away as a result of an unintended consequence.

Chairman Yeager:
Are there any questions from the Committee members? [There were none.] Is there anyone else in the neutral position on A.B. 439? [There was no one.] I will close neutral testimony and invite the sponsors of the legislation back up to the table for any concluding remarks.

Jared Busker:
I want to thank Clark County and Washoe County and the other counties for continually working with us on this legislation. We will be working diligently after the conclusion of this hearing to make sure that we have the language correct with the original intent of the language. We will be working with both counties after this hearing ends.

[(Exhibit J), (Exhibit K), and (Exhibit L) were submitted but not discussed and will become part of the record.]

Chairman Yeager:
I want to thank you and our soon-to-return-to-Nevada law students for working on this issue and presenting the bill. I will close the hearing on A.B. 439. Does anyone have any public comment, either in Carson City or Las Vegas? [There was no one.] Is there anything else from the Committee? [There was nothing.] The meeting is adjourned [at 10:44 a.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE:

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a letter dated April 7, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, presented by Kristina Wildeveld, Attorney, Nevada Attorneys for Criminal Justice, regarding Assembly Bill 424.

Exhibit D is a collection of letters and documents regarding Assembly Bill 424, submitted by Kristina Wildeveld, Attorney, Nevada Attorneys for Criminal Justice.

Exhibit E is written testimony regarding Assembly Bill 424, submitted by Christopher Williams, Private Citizen, Las Vegas, Nevada.

Exhibit F is a proposed amendment to Assembly Bill 439, presented by Jared Busker, Associate Director, Children's Advocacy Alliance.

Exhibit G is a copy of a PowerPoint presentation titled "Juvenile Fees in Nevada," dated April 8, 2019, presented by Savannah Reid, Student, University of California, Berkeley School of Law.

Exhibit H is a letter dated April 5, 2019, to members of the Assembly Committee on Judiciary, written and submitted by Joey Orduna Hastings, Chief Executive Officer, National Council of Juvenile and Family Court Judges.

Exhibit I is a letter dated April 4, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, in support of Assembly Bill 439, written and submitted by Egan Walker, District Judge, Second Judicial District Court.

Exhibit J is a document titled "Juvenile Fees in Nevada," submitted by Savannah Reid, Student, University of California, Berkeley School of Law.

Exhibit K is a letter dated April 4, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, in support of Assembly Bill 439, written and submitted by Margaret E. Hanan, Private Citizen, Las Vegas, Nevada.

Exhibit L is a letter dated April 1, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, in support of Assembly Bill 439, written and submitted by Jennifer Fraser, Chief Deputy Public Defender, Juvenile Division, Clark County Public Defender's Office.