MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-First Session
March 16, 2021

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:02 a.m. on Tuesday, March 16, 2021, Online. 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/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Rochelle T. Nguyen, Vice Chairwoman
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Cecelia González
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Lisa Krasner
Assemblywoman Elaine Marzola
Assemblyman C.H. Miller
Assemblyman P.K. O'Neill
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Ashlee Kalina, Assistant Committee Policy Analyst
Bonnie Borda Hoffecker, Committee Manager
Karyn Werner, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Aaron Ford, Attorney General
Jessica Adair, Chief of Staff, Office of the Attorney General
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Annemarie Grant, Private Citizen, Quincy, Massachusetts
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Ricky Gourrier, representing Nevada Police Union
Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Troyce Krumme, Vice Chairman, Las Vegas Police Managers and Supervisors Association
Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers
Tonja Brown, Private Citizen, Carson City, Nevada
Maria-Teresa Liebermann-Parraga, Deputy Director, Battle Born Progress
Richard Karpel, Executive Director, Nevada Press Association
Benjamin Zensen Lipman, representing Nevada Open Government Coalition
Alina Shell, Private Citizen, Las Vegas, Nevada
Scott Nicholas, Vice President, Las Vegas Police Protective Association
James Dold, Chief Executive Officer and Founder, Human Rights for Kids
Nedra Cooper, Private Citizen, North Las Vegas, Nevada
Gianna Verness, Chief Deputy Public Defender, Washoe County Public Defender's Office
Nathaniel Erb, Policy Advocate, Rocky Mountain Innocence Center; and Innocence Project
Jared Luke, Director of Government Affairs, City of North Las Vegas
Darin Imlay, Public Defender, Clark County Public Defender's Office
Aimee Holdredge, Private Citizen, Las Vegas, Nevada
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Elizabeth Florez, Interim Director, Department of Juvenile Services, Washoe County

Michael Whelihan, Assistant Director, Department of Juvenile Justice Services, Clark County
Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Kristina Wildeveld, Private Citizen, Las Vegas, Nevada
Ben Iness, Private Citizen, Reno, Nevada

Chairman Yeager:
[Roll was taken. Committee rules and protocol were explained.] We will now move on to our agenda. We have two bills on the agenda today, and we will take them in order. At this time, I will open the hearing on Assembly Bill 58. Before I turn it over to Attorney General Aaron Ford, I want everyone to know there is a proposed amendment [Exhibit C] from the Office of the Attorney General that can be found on Nevada Electronic Legislative Information System under the exhibit tab.

Assembly Bill 58: Makes changes relating to the authority and duties of the Attorney General. (BDR 3-417)

Aaron Ford, Attorney General:
For the record, my name is Aaron Ford, and I am your Attorney General. Joining me virtually and in person are members of my staff: Chief of Staff, Jessica Adair; First Assistant, Kyle George; Second Assistant, Christine Jones Brady; and Special Assistant Theresa Haar.

While I have long been an advocate for—and worked on—criminal justice reform, our efforts reached new urgency after the killing of George Floyd and the public outcry that immediately followed. Most of us in law enforcement are horrified, saddened, and angered by videos of police brutality. We do not want to be associated with bad actors or "bad apples" who use their status in law enforcement to act above the law, but we cannot use the phrase "a few bad apples" to excuse law enforcement officers who have engaged in excessive force, unlawful policing, or who have openly violated the constitutional rights of individuals. After all, the entire saying is, "One bad apple spoils the barrel."

The objective of a pattern-or-practice investigation is to identify the "barrels" and reform the patterns and practices of, among other things, excessive force, biased or discriminatory policing, or violations of any constitutional rights, including First Amendment rights to peacefully assemble or Fourth Amendment rights to be free from unreasonable stops, searches, arrests, or other seizures. Pattern-or-practice investigations will allow us to effectively determine whether claims of misconduct were one-off incidents, isolated incidents by individual officers, or a symptom of larger deficiencies within an agency's customs, training, or culture.

Before I turn to the bill, let me tell you what it is and what it is not. Our goal is not to "name and shame" law enforcement agencies. That would only further deepen community mistrust. Rather, this bill is about accountability. It is about fixing problems where they exist. These investigations allow an agency to remedy identified problems, rebuild trust between the police and the communities they serve, and strengthen lawful and effective policing practices. It also allows officers to ensure that they have the training and policies they need to be the best law enforcement officers for their communities.

The United States Department of Justice (DOJ) currently has federal authority to conduct pattern-or-practice investigations of state and local law enforcement agencies. Since 1994, the DOJ has conducted 70 investigations into police departments, which resulted in 41 reform agreements or court-ordered consent decrees. In January 2017, former U.S. Attorney General Jeff Sessions announced that the U.S. Department of Justice believed that these investigations should rightfully be conducted at the state level. He also said that the DOJ would no longer conduct them. As part of this new posture, the DOJ issued new guidance that limited the scope and usefulness of future consent decrees. Since January 2017, the DOJ has not initiated a single investigation into a law enforcement agency, and it has only entered into one consent decree from an investigation that began in 2015.

To be sure, as administrations change, so may policies. But even if the DOJ under newly confirmed U.S. Attorney General Merrick Garland were to resume exercising its pattern-or-practice authority, there are other reasons to pass this bill at the state level. First, and most obvious, this tool should not depend on the whim of a particular administration. Having pattern-or-practice authority reside at both the federal and state level doubles the likelihood that public complaints would be reviewed or investigated. Additionally, this bill addresses one of the shortcomings of the federal investigatory authority, namely, the lack of subpoena power. Under the federal version, if an agency declines to cooperate, the DOJ is limited in its ability to effectively gather information. This version remedies that shortcoming.

It should also be noted that Congress is currently considering passage of the George Floyd Justice in Policing Act, which would extend the DOJ's pattern-or-practice investigative authority to the states. My understanding is that the bill has passed the House of Representatives and is now being considered by the Senate. But this fact does not obviate the need for state action in this area, principally because the Nevada Office of the Attorney General is more familiar with the people and agencies of our state than is the federal government. To our office, home means Nevada, and we have a vested interest in ensuring Nevadans are safe and that their constitutional rights are protected. My office is also better positioned than our federal partners to understand the diversity of communities and local agencies across our state.

Point in fact, realizing these benefits, and because of Attorney General Sessions' call to do so, other states have given their attorneys general the ability to conduct pattern-or-practice investigations. Even more states are seeking such ability to this day. Today, we are asking you to add Nevada to that list of states that have given their attorneys general the authority to conduct pattern-or-practice investigations.

The bill before you today is a culmination of a collaborative process between law enforcement leaders, police union representatives, law enforcement management, district attorneys, members of the criminal defense bar, the American Civil Liberties Union of Nevada, and community organizations and organizers. I want to thank the following stakeholders for the countless hours they spent working on this amendment and for their support: Nevada Sheriffs' and Chiefs' Association; American Civil Liberties Union of Nevada; Las Vegas Metropolitan Police Department; Clark County Public Defender's Office; Nevada District Attorneys Association; Nevada Attorneys for Criminal Justice; Washoe County Sheriff's Office; Washoe County Public Defender's Office; Nevada Police Union; Reno Police Department; Las Vegas Police Managers and Supervisors Association; and Nevada Association of Public Safety Officers. There are countless others who have also offered input, and I thank them likewise for their input and support.

For the purpose of walking you through this bill, we will work off the amendment [Exhibit C] that my office filed with the Committee. I will start out of order with the most significant change in this amendment. Section 3 of the bill, as introduced, is now stricken. My office is not, at this point, seeking concurrent jurisdiction over certain police misconduct claims. In all honesty, having engaged in some important introspection, my office determined that we ourselves need to shore up our own ability to fulfill our statutory task of investigating and prosecuting misconduct committed by state officers. My brethren in law enforcement have graciously agreed to assist us with training and tools to do so, and I want to thank them publicly for doing that.

This bill only addresses pattern-or-practice authority. In that regard, section 1, subsection 1 of the amendment provides that no law enforcement agency or agency responsible for juvenile justice shall engage in a pattern or practice that deprives people of their rights under the *Constitution of the United States* or the *Nevada Constitution*, or any other law.

Section 1, subsection 2, provides that the Attorney General's Office may investigate claims that an agency covered by this bill has a pattern or practice of violating peoples' rights. This investigatory power is discretionary. If, after an investigation has been conducted, the Attorney General has reasonable cause to believe there is a pattern or practice of unlawful policing at an agency, the Attorney General must first notify the agency of that belief and the factual basis for alleging the agency has a pattern or practice of unlawful policing. The agency then has 30 days to respond.

The goal is to start a productive dialogue between the Attorney General's Office and the agency to identify the pattern or practice that is unlawful or any systemic deficiencies at the agency, and to work with the agency to correct those deficiencies. The agency will then have 60 days to make good-faith efforts to change the identified deficiencies. In the event the Attorney General's Office and the agency are unable to agree on a plan to reform the problematic activity, the Attorney General has the authority to initiate a civil lawsuit against the agency. The court would then be empowered to impose injunctive relief, compelling the agency to adopt certain corrective measures or to stop certain actions. Please note, this bill is limited to injunctive relief only and does not call for monetary damages.

I also want to make it abundantly clear that this investigation and authority to bring a civil action is directed at law enforcement agencies and not law enforcement officers. Agencies still rightly retain the power to discipline their own officers, and local city attorneys and district attorneys still rightly retain the power to prosecute an officer who is alleged to have broken the law. This investigation takes a comprehensive look at the agency as a whole and, if necessary, the action brought is a civil lawsuit—not a criminal prosecution—against the agency and not against any particular officer.

In that same vein, as Attorney General, I recognize that my own agency must also be accountable to the public just as any other law enforcement agency in this state would be. For this reason, section 1, subsection 3 requires the Attorney General's Office to participate in any federal pattern-or-practice investigations of the Attorney General's Office. This is important because, as I stated earlier, the federal law that gives the DOJ pattern-or-practice authority does not require agencies to cooperate in an investigation. However, this bill would legally require the Attorney General's Office to cooperate with any federal investigations of our agency and peace officers.

Section 1, subsection 4, allows the court to enforce the terms of any agreement between the Attorney General and an agency to remedy an identified pattern or practice that violates the *Constitution of the United States*, the *Nevada Constitution*, or any applicable laws.

Section 1, subsection 5, addresses the investigation itself. In this regard, before an attorney general can notify an agency of an identified pattern or practice, it must conduct an investigation and have a factual basis that shows there is, indeed, an unlawful pattern or practice.

Investigations are only as good as our ability to collect evidence. For that reason, section 1, subsection 4 grants the Attorney General's Office the power to subpoena witnesses, documents, and other information held by an agency—authority similarly granted to several other units within the Office of the Attorney General. This subsection also provides for judicial oversight over the use of the subpoenas in exercising powers pursuant to this bill. I want to emphasize two important aspects of this subpoena provision. First, this subpoena power extends only to evidence maintained by the agency being investigated. It does not extend to an officer's personal devices. Secondly, this subpoena power does not displace long-standing constitutional considerations against self-incrimination, such as the Fifth Amendment and Garrity rights.

Section 1, subsection 6, makes explicit that Nevada's whistleblower statutes are applicable to this bill, and it prohibits retaliation against a state or local employee who discloses evidence of an unlawful pattern or practice.

Section 1, subsection 7, requires that, at the conclusion of a pattern-or-practice investigation, the Attorney General's Office must publicly disclose one of three conclusions: either that an agency does not have an identified pattern or practice of unlawful policing; that an unlawful pattern or practice could not be factually substantiated by the evidence in an investigation;

or that the agency does have an identified pattern or practice of unlawful policing, and it has agreed to rectify that pattern or practice in the ways laid out in the report, or that it did not agree to rectify the pattern or practice and that the attorney general has decided to file a civil action. These public reports are important for accountability and transparency of taxpayer-funded agencies, and they will help augment, restore, or create public trust in law enforcement.

Section 1, subsection 8, addresses the confidentiality of the investigation itself. While a final report will be made public, the details of the investigation will remain confidential. Some of the information gathered in a pattern-or-practice investigation will be highly sensitive and could compromise active criminal investigations. For example, investigative materials could identify the personal details of not just individual officers, but also of civilians who have interacted with the police. A lack of confidentiality would undoubtedly lead to a chilling effect on people being willing to come forward to disclose information about unlawful policing. With that said, confidentiality can be waived by the disclosing party or by a court.

That concludes my presentation on the provisions in A.B. 58 as it is proposed to be amended. Were this bill to pass–and I hope it does–it is important to note that the pattern-or-practice authority this bill grants will not solve all our problems. This bill is just one tool in the toolbox to help build a better justice system in Nevada, but it is one that works.

As a law enforcement leader, I have had the pleasure of working with other law enforcement leaders across our state who are ready and willing to take up the mantle of reform. We heard from many of them during the Justice and Injustice forum my office held in the immediate aftermath of George Floyd's killing. It was indeed refreshing and reassuring that law enforcement stated with one voice that Mr. Floyd's killing was unjust and that we need to recommit ourselves to adopting tools to augment, restore, and create trust between law enforcement and the communities we serve. This bill is a direct result of that recommitment.

We are not afraid of high standards of excellence. We are not afraid of public scrutiny of our methods and actions. We are not afraid of examining those parts, patterns, and practices of our agencies that can and should be better to protect and serve all communities in Nevada.

Chairman Yeager:
Before I go to questions, I want to thank you and your team for the hard work on this bill. You listed some of the organizations you worked with. For members of the Committee, if you have it in front of you, the title page of the amendment lists those organizations. We reached out to your office the first week of session to inquire about this bill and whether it was ready to be heard. We were advised that work was ongoing, but here we are in week seven and this legislation reflects a lot of input from interested persons. I know that is not easy to do, particularly in the world we live in now.

Assemblywoman González:
In the beginning, you stated that there is a notice. How does the process start? Is it a notice that someone has filed, or does your office start it? Is it a notice of investigation? If you

investigated a policy, is there follow-up afterwards by your office? Do you check in to see if the policy was changed?

Attorney General Ford:
First, the notice I was speaking of in my presentation was notice that this office gives to the agency that a complaint has been received. We would get a complaint in our office from someone arguing an incident of police misconduct. That complaint, in and of itself, may be insufficient for us to start an investigation into a pattern or practice, but if that complaint is accompanied by facts that do, in fact, enable us to look into it from a pattern-or-practice perspective, we would pursue it that way. If we received several credible complaints, we would institute an investigation. It begins with notice to the agency itself.

Jessica Adair, Chief of Staff, Office of the Attorney General:
The specific notice mentioned in the bill is a notice to the agency that the Office of the Attorney General has conducted an investigation, and that the Attorney General's Office has a reasonable cause to believe and a factual basis to support that there is one or more identified patterns or practices of unlawful policing. At the conclusion of the investigation, the agency receives the notice, as mentioned in the amendment, that the investigation has concluded, and here is why we believe you have an identified pattern or practice. After the agency receives that notice, it has 30 days to respond to the notice. The agency may want to dispute the facts. Maybe the agency has additional facts that may lead us to a different conclusion. And maybe the agency says, "We looked into this over the past 30 days, and we think you are right. This is how we are going to fix it."

Regarding your second question about the Attorney General's Office checking in periodically to ensure the pattern or practice is being rectified and the plan agreed to is being followed, yes, it absolutely will. In fact, that is why section 1, subsection 6, says that the Attorney General's Office can seek court enforcement of a plan that was agreed to by the agency. For example, the Attorney General's Office has notified law enforcement Agency A that they have an identified pattern or practice of unlawful policing. The Attorney General's Office and Agency A work together to come up with a plan to rectify that pattern or practice. We publish the report saying that this is the pattern or practice and that is the plan. If Agency A does not follow through with that plan—even though the Attorney General's Office has not filed a civil action in court to force them to come up with that plan—the Attorney General's Office has the ability to go to court and enforce the terms of the agreement. We want to ensure that, just because an agency says they will do something, they follow through. The many law enforcement agencies that we worked with on this bill were completely supportive of the bill because they too agree that an agency should be held to a high standard. They absolutely welcome that standard and the accountability being included in the amendment.

Attorney General Ford:
So that the record is clear, I mistakenly said that the notice was before the investigation. The notice is after the investigation pursuant to the bill.

Assemblywoman Nguyen:
I like this bill, but I have some concerns on section 1, subsection 8. It seems a little broad. A lot of this is dependent on whether the record becomes public and if the Attorney General's Office decides to proceed. I understand what your intent is, and I understand your integrity in this, but for those attorneys general who potentially follow you—using people who may have preceded you as an example—what do you do when the records become public? Do these records become public if an attorney general decides he will ignore these statutes or their enforcement? You talked about the court enforcing it, but it is still at the direction of the attorney general. As an elected official, how does the public accept what you or your agency is investigating?

Attorney General Ford:
That was a question we received yesterday afternoon from an interested party. I will let my team chime in on this. As a general comment, investigative items are shrouded from public scrutiny during the course of an investigation. That is part of the practice and one of the exceptions in the public records laws.

Assemblywoman Nguyen:
Your team can answer this question as well. If the complainants themselves want to make it public, is it still protected and "secretive" for lack of a better word? Or is there an ability for it to be opened at that point?

Jessica Adair:
To answer the second part of your question, yes, absolutely. Anyone who files a complaint with our office can make that complaint public, and that goes in any instance. When we receive a complaint in our office, that complaint—if it is being investigated and is subject to an active criminal or civil investigation—is confidential throughout the investigation. At the conclusion of the investigation, however, it is no longer confidential and is subject to public records requests. We routinely disclose those complaints as subject to public records requests at the conclusion of an investigation. If there is some confidential information that identifies personal information about a complainant, we redact that. The complaint itself is public record. If someone wants to disclose that they filed a complaint, it is their right to do so.

When someone submits a complaint to our office, it is part of our practice to send a response letter acknowledging the receipt of that complaint. Of course, if a complainant makes a complaint that we do investigate, they will be contacted by an investigator who will walk them through the investigative process. They will know that their complaint is being investigated.

Regarding confidentiality, in this subsection, just because a piece of information being used by this office is confidential in the course of our investigation does not mean that it is not also a public record as long as it is a public record at whatever agency it comes from. For example, a policy manual at law enforcement Agency A is normally a public record. Anyone can file a public records request at that agency. Agency A would have a statutory

responsibility to respond to that public records request and produce any document that would normally be a public record. However, what we really want to do is to ensure that the information this office is collecting is treated confidentially during the course of the investigation. We are primarily protecting the integrity of the investigation because public discussions about an investigation can have a very detrimental effect on our office's ability to conduct an investigation. We expect that people who like to disclose this information may include their own interactions with police. We do not want to have a chilling effect on civilians and officers who wish to disclose this information or to have these investigations weaponized because some people have ulterior motives. That is why we felt this confidentiality provision was incredibly important and consistent with how investigations are currently conducted in law, as the Attorney General mentioned. There are also exemptions. If someone wants to disclose that information, they can do so, including a court or a federal agency, which is mentioned in the amendment. We discussed that question at length in a meeting with stakeholders. It is important that we balance the integrity of an investigation with the need for transparency and accountability to the public.

Attorney General Ford:
I want to follow up on two points. First, it has the ability for a court to disclose this. It is not only at the direction of or as an impetus from the Attorney General's Office, but if someone files with the court to get it opened or released, this does not prevent them from doing so.

Regarding Ms. Adair's comment, I would use the word "nefarious" motives. If we conduct an investigation and determine there was no pattern or practice involving a particular officer or civilian, some people with nefarious motives will still want to sully someone's name. We need to be cognizant of that as well. In an effort to balance the protections and interests of the parties involved—especially in the instance where no violation has occurred and this is purely a nefarious, sullying intent—we want to have protections in statute to disallow that.

Assemblywoman Nguyen:
I am glad we are having this conversation. I like this bill, and I am glad you are working with all the stakeholders to find that balance.

Assemblywoman Bilbray-Axelrod:
I am sure you said it, but I missed how many other states currently have this authority.

Attorney General Ford:
I did not say it, so you did not miss it. I think there are about a half dozen that currently have it, but there are several others, including Illinois, who are pursuing it. In the interest of disclosure, understand that my fellow attorneys general and I submitted a letter to the U.S. Congress when they first considered the George Floyd Justice in Policing Act asking them to give us this authority via the federal statute as well. There are efforts taking place across the nation to afford states' attorneys general offices to pursue this.

Assemblyman O'Neill:
I appreciate the bill and your working with the stakeholders. It enhances the bill for me. For clarification, does this bill give you the statutory authority to empanel or utilize grand juries? I do not see it in there, but I want to ensure I understand it correctly.

Attorney General Ford:
This bill does not do that. We have statutory authority elsewhere to empanel grand juries for criminal prosecutions. Very seldom are grand juries empaneled for noncriminal items. Sometimes it is simply to get reports from jurisdictions and such. That is not what this contemplates. Let me turn to my team down south to see if the conversation came up.

Jessica Adair:
It did not because this bill is limited to civil litigation, not prosecution, of any one officer or group of officers who might be subject to an investigation. This is entirely civil in nature. The only purpose of this bill or any action brought by the Attorney General's Office is to have a court determine whether there is a pattern or practice of unlawful policing in a particular agency and what the agency should do to change for the better. That is the only question that would be before the court.

It is important that you brought this up because it is worth reiterating that point. I am also reiterating that, if in the course of an investigation with this office or in looking at a pattern or practice with an agency, this bill does not change an agency's ability and right to discipline any officer who may have broken policy. It does not change the right and statutory jurisdiction of any city attorney or district attorney to bring a charge if a particular officer violated the law. Those agencies rightfully retain that jurisdiction. I want to make that point very clear, on the record, because it is important that, if there is a problem with a particular agency, we have a variety of tools to address it.

Assemblywoman Hansen:
I want to follow up on what Ms. Adair just expanded on to make sure I understand what exists now and what the bill looks to add. If an agency, say the City of Sparks, has a situation and the City of Reno investigates it since an agency does not investigate itself, that is allowed to continue. If there was another complaint, or there was no satisfaction with it, then you could be involved with the process. Am I understanding that right?

Attorney General Ford:
No, ma'am. We are talking about two different issues here. The context in which you are speaking would relate to an officer-involved use of force claim. I will not mention cities, but we will say City A has an officer-involved shooting, and City B investigates the shooting, not the department itself. As you indicated, the agency does not want to investigate itself. There are memorandums of understanding operating throughout the state right now. Those things take place all the time. That is separate and apart and qualitatively different from what we are talking about here. We are not talking about the investigation of the shooting itself to see if a particular law enforcement officer violated policy. We are looking at the pattern or practice of an agency. Right now, to my knowledge, City B cannot investigate City A on

a pattern-or-practice level. They can do investigations of individuals, but they cannot do the department-wide investigations. That is what this bill will allow my agency to do. That is the federal government's current ability to the extent they want to use that authority. There is no city-to-city authority. I hope I have helped to disconnect those two issues. They are different.

Assemblywoman Hansen:
In section 1, subsection 4, where you talk about civil injunctive relief only and no damages, does injunctive mean essentially that there is a cease and desist, and that you have to stop what you are doing?

Attorney General Ford:
It could be, "Stop what you are doing," or it could be, "Start doing this." Yes, that is what injunctive relief is. Damages means money, so there is no lawsuit for money.

Chairman Yeager:
Are there any other questions? I do not see any other questions. I would ask you all to sit tight for a moment, and we will take testimony on the bill. We will then come back for any concluding remarks. I will open it up for testimony in support of Assembly Bill 58.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I want to thank the Attorney General for bringing this bill forward and also for putting us all in a room for a very long time to work out all the aspects of various pieces of legislation that the Attorney General is bringing forward. We think the deliberative process that we all worked on together made the bill a better piece of legislation. We are in support.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
We also want to thank Attorney General Ford for this legislation, as well as for bringing us all together. I hope with this legislation we are able to provide our community members with some transparency and the assurance that there will be accountability. We appreciate his hard work to ensure our citizens are protected.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
My brother Thomas Purdy was hog-tied by Reno Police and asphyxiated to death while hog-tied and put prone by four deputies on his back, neck, and legs. I support this bill and wish it had been in place when my brother was killed by police in 2015 in Reno, Nevada. I wish it had not taken five years—and for a man in another state to be asphyxiated to death by police—for this bill to come before you all. Your state needs to own its own George Floyds and shortcomings by law enforcement. My brother was killed at a time when the jail death rate of incarcerated loved ones was five times the national average at Washoe County jail. Niko Smith and Justin Thompson were two others asphyxiated to death by deputies at the jail.

The Department of Justice did not act. I believe there was no true investigation by Reno Police or Sparks Police, nor do I believe there ever will be when they investigate themselves. Washoe County District Attorney Christopher Hicks does not even review deaths at the hands of police if it is by asphyxiation.

This bill is needed. I am not sure if the amendment has notification requirements to the attorney general within 72 hours, but it would be stronger with it. Perhaps my brother's death would not have been swept under the rug. There was no mention by the media of my brother's death at the jail for over two years. It took 13-plus people losing their lives at the jail for my brother's death to be made known to the public by someone other than me.

Injunctive relief is what our families truly want—true change—in policy and in the laws. Money will not bring our loved ones back or save other people.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We signed in as neutral, but with the amendment, we are here in support of the bill. We appreciate the Attorney General's bringing this forward. Law enforcement leaders in our association are not afraid of this type of oversight and actually welcome the extra eyes to keep Nevada law enforcement agencies the best they can be. The Nevada Sheriffs' and Chiefs' Association appreciates being part of the conversation that arrived at consistency in conduct and equitability of enforcement in law enforcement agencies throughout the state.

Ricky Gourrier, representing Nevada Police Union:
We want to thank the Attorney General and his staff for bringing forward this important bill and working with the Nevada Police Union and other law enforcement across the state.

Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice:
I am testifying in support of the bill with the proposed amendments. Nevada Attorneys for Criminal Justice believes this bill is good. It promotes accountability and provides a mechanism for addressing issues that the Attorney General has previously been unable to address. We think this is good and ask that you support it.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
At Progressive Leadership Alliance of Nevada, we work to structurally transform Nevada's criminal justice system by organizing with people who have direct experience with mass incarceration and their families.

We want to thank the Attorney General for bringing this important bill forward to help increase police accountability in Nevada. After moments of police violence, we often hear the phrase, "It was just a few bad apples." However, the problems often continue to happen over and over again. Pattern-or-practice investigations are an important tool to address systemic racism and discrimination in law enforcement agencies. We urge your support.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
I am testifying in support of A.B. 58. We appreciate the Attorney General's Office for bringing all stakeholders to the table and accepting our request to make the outcome of these investigations public after their conclusion.

The effectiveness of the law depends on who occupies the Attorney General's Office. The public has an interest in monitoring responsiveness to complaints. As an organization, we believe that the publication of an annual report, with the outcomes of investigations, balances the interest with a compelling need to monitor systemic racism in policing. Pattern-or-practice investigations have proven to be an effective tool to rein in and reform dysfunctional law enforcement agencies.

We often hear that cases such as the George Floyd case and countless others are the result of a few bad actors. The pattern-or-practice investigations in cities like Chicago and others reveal deep systemic issues that perpetuate violence and disparate treatment of Black and Brown Americans. You will often hear us and other police reform advocates complain that we are passing police reform policies that have no teeth. While there is still much work to be done, this bill gives us a valuable tool to discover and weed out systemic issues in Nevada police departments and is responsive to community requests for attorney general intervention. We appreciate Attorney General Ford for bringing this forward and for continuing to move us forward to ending racism in policing in Nevada.

Troyce Krumme, Vice Chairman, Las Vegas Police Managers and Supervisors Association:
We are members of the Public Safety Alliance of Nevada. We would like to thank the Attorney General's Office for bringing the many stakeholders together to ensure many impacted voices were heard in crafting this bill. It is imperative in policing that communities know their police departments are operating in a manner consistent with their safety while at the same time building public trust. To achieve this mission, it is our belief that the public needs an avenue and an agency to communicate and work with. It must have the authority to investigate and to confirm that police departments are conducting themselves in a manner that the community should expect. If it is found that the agency has a shortcoming, it must have the authority to bring corrective actions. With the proposed amendment language in this bill, we feel this bill hits the mark, and accordingly, we support this bill.

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers:
I am also a member of the Nevada State Law Enforcement Officers Association. I am here today in support of A.B. 58 as amended. This bill is part of a police reform movement that some feel should be opposed and denounced in its entirety by all law enforcement. However, we recognize and embrace those efforts that seek to protect the public while at the same time not losing sight of the important and dangerous work being done every day by law enforcement throughout our state. Attorney General Ford and his staff have gone to great lengths to balance those interests, and we applaud those efforts. The Nevada Association of Public Safety Officers was pleased to be part of a robust series of discussions with many

stakeholders to come to the present bill as amended. Therefore, we support A.B. 58 as amended, and we encourage this Committee to do the same.

Tonja Brown, Private Citizen, Carson City, Nevada:
I am an advocate for the inmates and the innocent. We strongly support this bill. I wish this bill had existed some years ago. I have personally filed a police complaint with the Reno Police Department. I personally spoke with the chief of police over some officers and some situations that were involved with the complaint. We sat down and the chief of police at the time agreed that the officers had done it. They were involved in it, but since it was a conflict of interest, he could not do anything. When I asked to have the Attorney General's Office investigate the matter, and for the chief to put in a request with the U.S. Department of Justice, he refused. This has been an ongoing problem over the years for people who want to file complaints against law enforcement officers and their agencies. They will agree that there is something going on, but they will not take the next step or do anything. Basically, they just cover it up.

Almost two years ago, I filed another police report for a complaint against some public officials. It went through the Reno Police Department but never made it past intake. The officer involved who took the complaint gave me a copy, so I could submit it to the Attorney General's Office, which I did. I have not heard anything, so I am hoping this bill will help in both areas.

Maria-Teresa Liebermann-Parraga, Deputy Director, Battle Born Progress:
We are in strong support of this bill. We thank the Attorney General for bringing this forward and for doing all this work to create more transparency in our law enforcement practices. This is exactly what our community has been asking for, and this is a very good first step. Everyone else mentioned where we stand, so "ditto" to everything they have said.

Chairman Yeager:
Is there anyone else wanting to testify in support of Assembly Bill 58? [There was no one.] I will close testimony in support. I will open testimony in opposition.

Richard Karpel, Executive Director, Nevada Press Association:
Although its aims are laudable, we take no position on the larger bill. However, we are concerned with section 1, subsection 8, which makes all information collected during the investigatory process confidential when a civil suit is not filed by the Attorney General's Office. We understand there may be reasons to keep some of the information confidential, but there are many statutory and common law exceptions to the Nevada Public Records Act that will allow the Attorney General's Office to prevent the release of personal or other potentially harmful information. With those tools already in place, it does not make sense to us to throw a blanket of secrecy over the entire process. If there are specific types of records that proponents believe should not be released to the public but are not considered confidential under current law, we think those specific, narrow exceptions to the Public Records Act should be written into the bill rather than making everything secretive.

Benjamin Zensen Lipman, representing Nevada Open Government Coalition:
We do not take a position and are not here to speak in opposition to the basic premise of the bill. We oppose, and are deeply concerned about, the portions of the bill that inadvertently shroud the system in secrecy. We appreciate the Vice Chairwoman's expression of concern on this issue as well.

Investigations in the state of Nevada are not always closed just as a matter of course, and it is for a good reason. The public has a right to know and good reason to know what their governmental entities are doing. Victims have a right not to have their stories hidden from the public. Hiding allegations such as these serves only to perpetuate the silence that has let these problems fester for years, and in fact, for decades. Knowing that one person has the courage to come forward encourages others to come forward. In this state and across the country, we have seen time and time again situations in which victims of abuse have come forward after they know other victims have had the courage to step forward. There is some safety in numbers, and many of these problems would never have come to light. In fact, statutes such as this would likely never be proposed without public understanding and demand for accountability that comes with the public knowing that these allegations are being made. Allowing the public to see this information ensures accountability for those conducting the investigations as well.

We are not expressing concerns about Attorney General Ford—his efforts to bring this bill are laudable—but rather administrations to come. The public needs to have accountability, and the only way we can have it is if the public knows what the Attorney General's Office is doing in these investigations, not just when the Attorney General's Office chooses to bring a lawsuit, but also when the investigators choose not to take any action. The public needs to know what the allegations were so they can decide for themselves whether there should have been action taken when none was taken. The confidentiality provisions in this bill are extremely broad. We do not think there should be confidentiality or, if there is, only for a limited time and only on very specific information. We need to remember that, as the Attorney General has said, it is the agency that is being investigated here. Allegations against a government agency, whether well-founded or not, should never be shrouded in secrecy. It is for that reason we oppose the confidentiality provisions in this bill.

Alina Shell, Private Citizen, Las Vegas Nevada:
I am a civil rights attorney and, I find myself in an odd position today because, in spirit, I support enabling the Attorney General's Office to investigate law enforcement agencies accused of engaging in patterns or practices of civil rights violations. However, I cannot support the bill as currently drafted because of the overbreadth of the confidentiality provision. I appreciate the Attorney General and the other stakeholders on this bill protecting whistleblowers and witnesses, but as currently drafted, the bill impacts the interests of civil rights litigants. Civil rights lawsuits are the most longstanding and prevalent way to address patterns and practices of civil rights abuses. To steal a phrase from Attorney General Ford, a civil rights lawsuit is one of the most important tools in the civil rights reform toolbox.

I have litigated many policing issues concerning race. In civil rights cases against a police department, the fact that the state has investigated the department for patterns or practices of civil rights abuses—regardless of the outcome of the investigation—would be immensely important to civil rights cases.

I appreciate the desire and need to protect whistleblowers and witnesses, but there are other ways to protect those individuals that would not require the sort of wholesale sealing of all of the testimony, documents, the investigation, and evidence, either as the bill was introduced or with the Attorney General's proposed amendments. It is ironic to me that confidentiality has historically hindered federal civil rights investigations, as well as civil rights litigation. It seems to me that the provision as currently drafted would do exactly that. It would hinder things by covering them in a blanket of confidentiality. I would like to also note to the Committee that it is important when assessing this confidentiality provision to consider the mandates of the Nevada Public Records Act. The democratic principles are best served by broad access to public records with only narrow confidentiality exceptions. Transparency regarding these investigations not only promotes public trust in the Attorney General's Office by allowing the public access to assess how well the Attorney General is carrying out the law, but also promotes public trust in the police.

Scott Nicholas, Vice President, Las Vegas Police Protective Association:
We oppose this bill for several reasons. First, there have been zero cases—as the Attorney General has already pointed out—that have come to light in any recent memory for this office to need to investigate.

The next reason is that the Department of Justice already has the ability to investigate the departments, so this would duplicate services. The departments are doing a great job, and that is why we have zero cases in this state. They have the ability to investigate and do a thorough investigation, especially here at the Las Vegas Metropolitan Police Department.

Finally, the bill would cause resources that are in place right now to be severely impacted. If they are impacted, there would be a large fiscal impact to the state taxpayers. We do not believe this bill is necessary. It looks like another political move to satisfy groups that believe there is some type of misconduct that clearly is not there.

Chairman Yeager:
Please limit your comments to the substance of the bill. We are not here to question the motives of the sponsor of legislation. We are here to vet whether the policy in front of us is good.

I will close the testimony in opposition and open for testimony in the neutral position. [There was none.] I will close neutral testimony and invite Attorney General Ford to give the last word on Assembly Bill 58.

Attorney General Ford:
I have a few responses to some of the comments made, but I want to offer my chief of staff, Jessica Adair, a few comments on the confidentiality provision. I would then like to speak on that as well.

Jessica Adair:
I want to specifically address some of the comments made about section 1, subsection 8—the confidentiality provision of this amendment—because there is some misunderstanding and confusion that may have led to some of the opposition testimony. There was a statement that civil rights litigants would be in a worse position because of this provision. I would argue that is a misunderstanding of this provision. Section 1, subsection 8 of this bill does not change any of the existing statutory responsibilities that lay on any law enforcement agency that currently exists in the Nevada Public Records Act. If law enforcement Agency A has documents that are subject to public records disclosure, whether the documents are used by our office's investigation, it does not change that agency's responsibility to respond appropriately to public records requests. Additionally, it does not change the normal process for litigation discovery. If an individual were to file a civil rights lawsuit against an agency or a law enforcement officer, all of the normal processes that occur for litigation discovery would still be in effect. Civil rights litigants would be in the exact same position they are in right now in the state of play here in Nevada. This bill would not change that.

A caller noted that the public needs to know what the allegations were that led to an investigation, whether or not the Attorney General's Office filed a civil action. You are right; that is why we included that in section 1, subsection 7. It specifically requires the Attorney General's Office to publicly disclose the existence of an investigation, the conclusion of the investigation, and whether there was an identified pattern or practice, or if there could have been a pattern or practice but the factual basis was not substantiated. That is why we included section 1, subsection 7. It was at the specific request of some groups that have a vested interest in transparency and open government. I would have encouraged these folks to come to our office and discuss these concerns with us. We are happy to do that in the future, so we could clarify some misunderstandings in that regard.

I would also state that complaints made to our office are subject to the public records disclosure of the allegations made, and those would be subject to the Public Records Act in the normal course of a public records request to our office. I hope that clears up some of the confusion that was brought to light in the opposition testimony.

Attorney General Ford:
I also want to highlight that it is not a blanket confidentiality provision. The law itself says that it can be disclosed if authorized by a district court. I will also say that, unfortunately, we did not hear about the concerns until yesterday. The language has been out since November. We have had working groups ongoing for months, including a humongous one last week. It would have been great to hear from them then. In fact, some representatives of the Open Government Coalition were part of the discussion groups. This bill is intended to

incorporate a lot of those concerns. We are happy to clear up any misconceptions or misunderstandings around the bill, which leads me to a couple of other points.

We invited the Las Vegas Police Protective Association to participate in the discussion on this issue. They did not respond or show up for the meeting. It is unfortunate that they have shown up today in opposition. We asked them to submit language for consideration if they had any suggestions. This was months back, but it has not taken place. It is unfortunate to hear them oppose the bill, especially when other comparable labor unions are in favor of this bill because they participated in the process.

There was an allegation that this was political. It is not political; it is policy. Frankly, it is also a little personal. The truth is I have gone on ride-alongs with law enforcement, most recently in Elko. I have seen and appreciate the day-to-day interactions that our law enforcement have to engage in. I get the "day in the life." The truth is they cannot walk a second in my shoes as a Black man and having to respond in the aftermath of George Floyd. There is no ride-along that I can offer them. What I can offer them is what we did offer: to come sit at the table with us and to hear what we have to say around these issues. Let us figure out a way to accommodate the interests of our community, which is demanding better relations and more trust in law enforcement. I am a member of it whether they like it or not. What I have endeavored to do through my Justice and Injustice forums and dozens of conversations—and through the work of this working group—is to come up with a bill that accommodates the interests and concerns of all interested parties.

If you would allow me a little vulnerability, I will tell you that this is not easy. The people who sat in that room last Tuesday and hashed this out on all sides of this issue did this. I am immensely grateful to them for coming together and understanding the importance of this moment and figuring it out. They did this. It was not easy. I am not on the American Civil Liberties Union's side. I am not on the district attorneys' side. I am on the side of justice. In our office, we say our job is justice, and this bill helps effectuate justice in our state. Those who are opposed have misunderstandings or misconceptions about this bill, and we invite you to come talk to us. We are happy to hear what you have to say and to try to disabuse you of those notions. We would also ask that, going forward, you engage us before the night before so we can see if there are things that can be done to address your concerns.

The last thing I would like to say is, on a bright note, I am prone to do a little karaoke here and there. It seems as if I may need to add "The Humpty Dance" to my repertoire in addition to "Brick House" and "Nuthin' but a 'G' Thang"—the clean version of course.

I hope we can have your support in what has been a great bipartisan and multiparty effort. I have a lot of gratitude for my team down in southern Nevada for pulling this off and getting folks in the same room—those who got in the room—to work this out. You are appreciated.

Chairman Yeager:
I want to thank those who did engage. I know there was a lot of work, and it was a long time coming. I appreciate it as well. With that, I will close the hearing on Assembly Bill 58.

We will move on to our second bill on the agenda. I will now open the hearing on Assembly Bill 251. Assemblywoman Krasner will present the bill this morning, but before I hand it over, I will let you know there is an amendment on the bill [Exhibit D] that can be found on the Nevada Electronic Legislative Information System.

Assembly Bill 251: Makes various changes relating to juvenile justice. (BDR 5-986)

Assemblywoman Lisa Krasner, Assembly District No. 26:
I am pleased to present Assembly Bill 251 for your consideration today. Assembly Bill 251 will help ensure children under the age of 18 do not waive their Fifth Amendment constitutional rights without first talking to a parent, guardian, or an attorney. The bill will also help address the harsh impact that a juvenile record might have on future success in society.

We always talk about giving kids a second chance and a fresh start, but we never really seem to give them one. Assembly Bill 251 does three things, and we are working off the amendment [Exhibit D]. First, it requires a police officer or probation officer to ensure that a child in custody first consults with a parent, guardian, or attorney before waiving their Fifth Amendment constitutional right to Miranda warnings and the custodial interrogation begins.

Secondly, Assembly Bill 251 also establishes provisions for a juvenile's records to be automatically sealed at 18 years old. Currently in Nevada law, juvenile records are automatically sealed at 21 years of age.

Third, A.B. 251 allows anyone over the age of 18 to petition the court for the expungement or destruction of their juvenile records for any infraction, arrest, or crime equal to or less than a misdemeanor that was committed as a child.

To give you some background information, the landmark 1967 United States Supreme Court decision, *In re Gault*, [387 U.S. 1 (1967)], involved a 15-year-old boy sentenced by a juvenile court to serve 6 years in a state industrial school for making a prank phone call. Overturning the lower court's decision, the Supreme Court held that children facing prosecution in juvenile court have the same due process rights as adults, including the right to remain silent, the right to notice of the charges against them, the right to an attorney, and the right to a full hearing on the merits of the case.

A more recent case also involved due process matters, *J.D.B. v. North Carolina* [564 U.S. 261 (2011)]. J.D.B. was a 13-year-old student enrolled in special education classes whom police suspected of committing a crime. J.D.B. was interrogated by his school, a uniformed investigating police officer, and school officials. He subsequently confessed to stealing and was convicted. J.D.B. was not given his Miranda warnings during the interrogation, nor an opportunity to contact his parent or legal guardian. Since J.D.B. was not given his Fifth Amendment Miranda warning, attempts to suppress the statements made by J.D.B. were denied on the grounds that J.D.B. was not in police custody. After hearing the case on

appeal, the U.S. Supreme Court held that age and mental status are relevant when determining police custody for Fifth Amendment Miranda purposes. Even after these cases, gaps remain in state procedural due process protections for young people. For example, in many states, every child is still not guaranteed a lawyer during police interrogation.

As this Committee has heard in other testimony, a child's brain is not fully developed until age 22, and they are not able to make logical, informed decisions, especially under stressful situations such as custodial interrogations. We do not let kids buy alcohol until they are 21 years of age, but in Nevada, we let kids waive their constitutional rights at age 15, 16, 17, et cetera. According to the National Conference of State Legislatures, several additional states have begun to address this matter, at least regarding Fifth Amendment Miranda rights. Recently, two states enacted laws increasing due process protections for young people when they are being interrogated by the police. California now provides that all youth under age 21 have the right to consult with an attorney prior to a custodial interrogation by law enforcement. Virginia now gives a young person the right to have contact with their parent, guardian, or attorney either in person, by telephone, or by videoconference before a police interrogation.

Turning to the topic of juvenile records, one commonly held misconception is that once children turn 18, their juvenile records disappear and they can go forth with a clean slate. In many instances that is not the case, and young offenders may face serious consequences and obstacles as a result of their juvenile record. A juvenile adjudication can prevent a young person from receiving financial aid for higher education, admission to college, getting a job, joining the military, or being admitted into certain licensed professions. It can also affect eligibility for public housing, not only for the delinquent minor, but also for his or her family.

In the last 15 years, many state legislatures have included provisions in their juvenile justice statutes to seal, expunge, and implement other confidentiality safeguards for juvenile records. As most of you know, sealing refers to closing records to the public but keeping them accessible to court personnel and law enforcement. In general, the child's record remains accessible to law enforcement officers, prosecutors, and sentencing judges for purposes of investigating and prosecuting any future crimes in which the youth may be involved.

Expungement, on the other hand, involves the complete physical destruction of a juvenile's record. All references to the juvenile's arrest, detention, adjudication, disposition, and probation must be deleted from the files of the court, law enforcement, and any other person or agency that provided services to a child under a court order. An expunged record is to be treated as though it never existed. All states have some type of procedures that allow juveniles to petition to either seal or expunge their records in certain cases. However, these procedures can be confusing and cumbersome, and it is high time we addressed this confusion.

In addition, the U.S. Supreme Court cases—including *J.D.B. vs. North Carolina*—require us to take a hard look at our juvenile justice statutes and practices that have been in place for

many decades. Our next step as a state is to update our treatment of juvenile records and to conform the laws that are shaping the juvenile justice system to how the Supreme Court has now mandated we treat children.

We are working from the amendment to the bill found in the Nevada Electronic Legislative Information System. Assembly Bill 251 contains three components. The first of these provides that prior to a custodial interrogation, a peace officer or probation officer must ensure that children in custody consult with a parent, a guardian, or an attorney before they can consent to waive their Fifth Amendment constitutional rights to Miranda. That can be in person, via a teleconference, or over the telephone. The second component of the bill addresses the sealing of records. Nevada law currently has automatic sealing of juvenile records at age 21. This bill would change automatic sealing of juvenile records to age 18. There would still be judicial review in some cases; that will remain the same. The third component of the bill states that, after age 18, a youth may petition the court for the expungement or destruction of all juvenile records for infractions, arrests, or crimes committed as a juvenile that were a misdemeanor or less when committed.

In conclusion, now is the time to address the inequities in the law as they relate to children waiving their Fifth Amendment constitutional right to Miranda, and to address the impact that a child's juvenile records can have on a child's life and future. The *United States Constitution* starts with three words, "We the People." Who are these people that our Founding Fathers talked about? They are you, and you, and me; they are us. We are the people who make the law in this state. We are the people who can really give our kids a fresh start and a second chance. Please join me in supporting A.B. 251.

Next, you will hear from the copresenter of A.B. 251, Ms. Kendra Bertschy from the Washoe County Public Defender's Office. After Ms. Bertschy's testimony, we will be happy to answer any questions.

[Assemblywoman Krasner's written testimony Exhibit E is included as an exhibit of the hearing.]

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

This bill will help fill the gaps to ensure our children are protected. The American Bar Association reports that juveniles waive their Miranda rights at extremely high rates, with several studies putting it at roughly 90 percent. Studies—including that of the University of Michigan Law School's study of exonerations in the United States—have shown that a staggering 42 percent of exonerated juveniles had falsely confessed. One child that is wrongly convicted is one too many.

As you heard from Assemblywoman Krasner, states across the nation, including Illinois, California, and a dozen additional states, are working to enact laws to protect our children from wrongful convictions by adding additional protections for juveniles when they are interrogated. They are ensuring either an attorney, parent, or guardian is present to ensure

these children understand their rights when they are deciding whether to speak with law enforcement.

Section 1, subsection 1, of the conceptual amendment sets forth the requirement that there is a ban on custodial interrogations of any youth under the age of 18 unless he has the ability to consult with an adult, parent, guardian, or attorney about their rights.

Below that paragraph in the conceptual amendment, it discusses the exact safeguards that this Legislature should put into place in order to ensure children understand their rights, as well as the procedure for ensuring police have contacted the guardian and that the child has had an opportunity to speak with that individual to understand their rights and then to make that crucial determination as to whether to proceed with the interrogation.

Regarding the safeguards, the first issue for the police is whether the child would like to speak with an attorney, parent, or guardian. In my prior practice, this element itself would have been crucial because it requires the police officer to indicate, not only if an attorney should be appointed, but also that it is a free attorney. The reason this is extremely important is that a lot of children—and even adults—do not understand what the appointment of an attorney means. This clarifies that it is a free attorney who would be available to them immediately.

The second part of that paragraph discusses what it means to waive your constitutional rights. It not only provides children with the opportunity to specifically state that they want to waive their right, but also for the parent or guardian to state that they wish for the individual to waive their right. The Human Rights Watch states that this is very important for juveniles to understand because many children think when you say you have the right to remain silent that you have the right to remain calm, which is certainly not the case. This is crucial to ensure that all the parties understand what is happening, and if the juvenile does speak with law enforcement, it is necessary for everyone to be on the same page.

This new law will ensure that no child is left alone to figure out his options when facing the prospect of interrogation. It will enhance the child's ability to exercise this vital constitutional right and to reduce coercive pressures. Hopefully, it will mean there will be fewer false confessions and wrongful convictions in our state.

Assemblywoman González:
The first sentence of the amendment, where it says the juvenile has consulted an attorney, parent, or legal guardian, does that mean they must consult all those parties? If they have consulted just one of those parties, are they good to go? The word "or" is throwing me off. Can you clarify that?

Assemblywoman Krasner:
We are working off the amendment. In the bold area of section 1 of the amendment, it says that a child may consult with an attorney, parent, or legal guardian, so that means any one of those.

Kendra Bertschy:
I can provide further information regarding that question. The request for an attorney to be involved would be for a public defender. For context, in negotiating this bill and this topic last session, this is one of the issues that was raised with the stakeholders—including the district attorneys' offices and law enforcement—that it should be "or." It should be an attorney, a parent, or a legal guardian.

Assemblywoman González:
There are quotations in the amendment of scenarios such as, "Did you have enough time to speak with your parent, legal guardian, or attorney? You can have more time if you need it." Another is, "Do you want to waive your constitutional rights and speak to me? You can say no." And then there is, "Do you give consent to the minor to speak to law enforcement . . . ?" Are these going to be in statute and be a requirement for the officer to say? If not, where are the officers going to be trained to have this conversation with them?

Assemblywoman Krasner:
The public defender's office prepared this specific language. I believe this is the language we do want in statute because it is so important that a child's constitutional rights are considered. I know you are all familiar with the case of *Miranda v. Arizona* [384 U.S. 436 (1966)] where a rapist was denied his constitutional rights as an adult and was eventually set free according to the U.S. Supreme Court. We think a child should have the same Fifth Amendment constitutional right of Miranda given to them to consult with a parent or guardian or an attorney, before they are able to waive their constitutional rights.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
All police officers carry around a Miranda warning card in their pocket and generally read from that card. There was a case from the U.S. District Court for the District of Nevada that determined the current Miranda that they were using at the time was inadequate. The Las Vegas Metropolitan Police Department quickly corrected that and put in their police reports that they are using this updated version of Miranda. When we read police reports, often the police officer will go through the Miranda warnings in the report that they went through with the client, so we all know on the back side whether they were adequate. We will also be able to view it on body camera video as well. This is the version we would like them to use with juveniles, in statute, and placed on their cards.

Assemblyman Wheeler:
I have a question on the definition of "custodial." I know there have been many different definitions of this, and it is still vague in law. What I wonder about is unintentional utterances. For instance, a police officer pulls up in a shopping district and sees a huge, broken window. Little 12-year-old Steve is standing in front of it. The police officer walks up to little 12-year-old Steve and asks him, "What happened here?" Steve says, "I did not do it." The police officer asks, "Do you know what happened?" and Steve answers, "Yes, I saw P.K. swing a bat, and it slipped out of his hands and went through the window." That is an unintentional utterance. Would that no longer be admissible?

John Piro:
I agree with you that the definition of "custodial" is something that is litigated often. I do not believe this law would change it or make it any harder to litigate. When a person is not free to leave, we consider that under custodial interrogation. However, excited utterances are generally not excluded prior to Miranda under current case law.

Assemblyman Wheeler:
Generally, but it is not actually in case law, is it?

John Piro:
They are generally not, but it is an issue that does get litigated. Right? If I were defending Assemblyman O'Neill, I would be litigating that issue. There is a likelihood that I would lose that issue though, but I would still litigate it to protect his rights.

Kendra Bertschy:
In the text of the introduced bill, which would still be included in the conceptual amendment, is the definition of "custodial interrogation." I believe it does specify that the individual needs to be detained, so unfortunately, Assemblyman P.K. O'Neill would not qualify for having this law apply to him.

Assemblywoman Nguyen:
I was looking at the proposed amendment and section 3, which specifically talks about expungement. Do we have expungement statutes—provisions in statutes—or do we only have sealing right now? Would this necessitate having an entire section dedicated to expungement as opposed to sealing?

Assemblywoman Krasner:
Yes, section 3 of the amendment would allow an 18-year-old to petition the court for expungement. Currently, we only have sealing in Nevada. Whether that would necessitate creating a new section in the *Nevada Revised Statutes*, I would assume it would, but I will let one of the public defenders respond to that.

John Piro:
Assemblywoman Krasner is right. Currently, we only have sealing. This may be a question best suited for the Legal Division of the Legislative Counsel Bureau. I would say that Assemblywoman Krasner is going for the gusto because she wants to give kids a fresh chance at life, and we fully stand behind that.

Assemblywoman Nguyen:
I will reach out to Legal and if they have any other details on how we can implement that, I will let the other Committee members know.

Assemblywoman Kasama:
This reduces it to age 18. In current statute, it is 21 years. What was the original thinking between 18 and 21? Did law enforcement feel they needed access to records for more years after the child turned 18? What was the concept behind that?

Assemblywoman Krasner:
Assemblywoman Kasama is referring to section 2 of the amendment. Currently, in Nevada law, a juvenile's record is automatically sealed at 21. This bill will bring it to 18, except for certain records that the court retains jurisdiction over. Those would remain under the court's jurisdiction. The court would still have judicial discretion over those just as it does now.

I do not know what the original thinking was. Right now, when kids are 18, a lot of them want to apply to college and all college applications are online. There is a question on the applications from the other 49 states that asks if the applicant has ever been arrested. It does not provide a section where you explain that it was a bad arrest or anything like that; it just says "yes" or "no." The child must click the yes box. Getting into college is so competitive; the application probably goes straight into the trash can.

Assemblywoman Kasama:
So, we do not know why it is age 21. I understand the intent of the bill is to make it 18 years to make it better for children. I was wondering if there was some law enforcement reason that I do not know about as to why it was originally 21 years.

Assemblywoman Krasner:
I will let one of the public defenders respond since they may have an answer for you.

Kendra Bertschy:
We found it interesting that we had this conversation with the courts regarding a bill that will come over from the Senate Committee on Judiciary, Senate Bill 7. What we learned is that no one knows why 21 was selected. We decided it should, perhaps, be at 18 years of age. I am very grateful that Assemblywoman Krasner is bringing this more in line with other statutes that say a child is an adult at the age of 18.

Assemblywoman Kasama:
Explain to me in layman's terms what the difference is between sealing and expungement. I know the definitions are that the record is still there in sealing, and in expungement, they are completely destroyed. From a law enforcement standpoint, if it is sealed, does it mean courts could still have access to them? Is that the current ruling on sealed records versus expungement? Would some courts still need access? Is it better to keep them sealed instead of expunged?

Assemblywoman Krasner:
Sealing refers to closing records to the public but keeping them accessible to court personnel and law enforcement. Expungement, on the other hand, involves the complete physical destruction of a juvenile record as if it never existed.

Assemblywoman Kasama:
Would law enforcement still need access? Is it better to keep it sealed rather than expunged?

Assemblywoman Krasner:
I cannot comment on what law enforcement would say. You would have to ask them.

Kendra Bertschy:
I believe that is the reason Assemblywoman Krasner specified that it would be for certain misdemeanor offenses. It is not for felony offenses or anything of that nature. It is for small, minor offenses.

Assemblywoman Kasama:
So, expungement is strictly for misdemeanors or less.

Kendra Bertschy:
Yes.

John Piro:
To add a certain level of comfort as well, there are certain things that cannot be sealed, such as sexual offenses and things we want to keep track of to ensure they never happen again. That is not going to be sealed under this legislation.

Chairman Yeager:
The way I read the proposed amendment, it looks as if the expungement would be accomplished by filing a petition with the court. The court would be involved in deciding whether the record should be expunged. I would invite anyone who is offering testimony who has a perspective on Assemblywoman Kasama's questions to offer that perspective during your testimony. We will see who is going to testify on the bill, and they may have some of the information you are looking for.

Assemblywoman Summers-Armstrong:
I am very excited to see this. I have a clarifying question that I am sure the public defenders can help with. I am not sure what a custodial investigation is and where the line is drawn. If a person is being questioned, when does it become custodial where Miranda needs to be read? Can you clarify that?

John Piro:
That is always going to be [unintelligible] at litigation. From our standpoint, the moment a child is not free to leave or walk away, that is custodial. I know the state may have a different position than we do, but that is our position. The moment you are not free to walk away, not free to not answer questions being asked, that is the precise moment, before any further questioning occurs, that your Miranda rights need to be read to you.

Since I did not say this before, our office is willing to take the next step and be available by phone. We will have a phone line available, and attorneys will be on deck to answer the phone when something like this happens.

Kendra Bertschy:
I will echo that, and our office is doing the same. I will note that the Department of Indigent Defense Services, Board of Indigent Defense Services, is responsible for the rural jurisdictions to ensure that policies and procedures are put in place. It is my understanding that they would be responsible to ensure [unintelligible].

Assemblywoman Summers-Armstrong:
That was my next concern. We heard that in a previous bill regarding having an attorney available and that person knew he could call and speak with an attorney. We sometimes look at things from our perspective because we may have more knowledge from working in environments that give us more insight.

I was sitting here listening to the conversation, and I could see in my mind a situation where a young person may have called mom or dad or grandma and said that he was going to be taken downtown and he did not know what to do. Grandma, mom, or dad said they did not know what to do either and to call an attorney. Is the child allowed to have a follow-up call to ask for an attorney? Is that one phone call to the custodial parent or guardian all they get? Do they have to make a decision right on the spot? Are they also allowed to call an attorney for assistance when mom and dad cannot help them?

Assemblywoman Krasner:
The public defender's office, working off the amendment, crafted the entire section of what must transpire when a child under the age of 18 is in a position where they may have to waive their Fifth Amendment constitutional right to Miranda warnings. The way they called this out, "the consultation may be in person, by videoconference, or telephone." The section also says that:

> A police officer shall not conduct a custodial interrogation on a juvenile under the age of 18 without first having the juvenile consult an attorney, parent, or legal guardian. The consultation must be made confidential, but may be in person, by video communication, or telephone. The juvenile must be informed that they can speak to an attorney for free. After the consultation, the police officer must ask the juvenile, 'Did you have enough time to speak with your parent, legal guardian, attorney? You can have more time if you need it.' If no additional time is needed, the police officer must ask, 'Do you want to waive your constitutional rights and speak to me? You can say no. I have to respect that and not ask you any questions. If you do, I can tell anyone what you tell me. This means that you are waiving your Fifth Amendment constitutional right if you speak with me.' If the juvenile consents, the parent, legal guardian, or attorney for the child must be asked, 'Do you give consent to the minor to speak to law enforcement, and in doing

> so, waive their Fifth Amendment right to remain silent? Do you understand that this means that anything they say can and will be used against them in court, which could include a criminal case?' If either the adult or the juvenile do not wish for the juvenile to speak with the police officer, that shall be deemed as an invocation of the Fifth Amendment right and the police officer must immediately stop asking questions.

It is important that we have a parent, legal guardian, or attorney there. Parental rights are also very important. As I mentioned earlier, an adult rapist who does not get his Fifth Amendment constitutional right to Miranda explained to him will get off free according to the Supreme Court of the United States in that seminal case, but a child does not have to be given their constitutional right? They do not get to consult with their mom or dad, a guardian, or an attorney? That is wrong.

Kendra Bertschy:
That is what the case law indicates. If a minor child or any adult at any point during interactions with law enforcement says that they want to speak to an attorney, that means they are invoking their rights, and law enforcement cannot continue questioning them without the presence of their attorney. That is our intention with this bill. Even if they start by speaking to a parent or guardian—who also may not know their rights or may not know how to proceed—if the child wants to speak to an attorney, they are still afforded that right according to our laws.

For the Committee's information, this is already taking place in communities across the nation. King County—which is a county in the state of Washington that was mentioned during the hearing on Assembly Bill 132—already has this program in place where an attorney is on call in order to respond to custodial interrogations and questions.

Assemblyman O'Neill:
I know what an attorney is; that is easily defined. I know what a parent is. What is the definition of a "guardian" here? Can it be the school principal from where the juvenile is taken into custody?

Kendra Bertschy:
A "legal guardian" does have a specific definition in the law. If a child is taken into care and custody, the social services or human services agency in that jurisdiction becomes the legal guardian. Additionally, a legal guardian could be determined through the guardianship proceedings. That is someone who has stepped into those shoes, and the court has determined they are and should be acting as the parent for all intents and purposes.

Assemblyman O'Neill:
My second question has been somewhat answered already in the amendment, but it just says, "If either the adult or the juvenile . . . ," so I was wondering if that should be clarified since you keep talking about a parent, attorney, or guardian? What happens if the adult leaves it open now?

Kendra Bertschy:
I think you raise a very valid point. In the writing process, if it is determined that we need to add that additional clarification, we are happy to do so in order to ensure that everyone is on the same page regarding these rights. If any of the parties—parent, guardian, attorney, or child—decide they want to invoke their rights, it actually invokes the juvenile's rights.

Assemblyman O'Neill:
To clarify, if the parent says to invoke, but the 17-year-old says he wants to talk, it is the parent's decision that is the override, correct? That is how I read it.

Kendra Bertschy:
That is a great question. I do not think this law states who has the override. If someone invokes the right, the right is invoked.

Assemblyman O'Neill:
I know in adult courts the adult will override the advice of the attorney if he decides to speak. I am asking for clarification. The way I read it, if any of the four want to invoke, it does not matter what the juvenile wants. Am I reading that wrong? The last part of the amendment says, if either the adult or the juvenile does not wish for the juvenile to speak, the questions should stop immediately.

Assemblywoman Krasner:
You are right, that should be clarified, and I am happy to amend it. It should be very clear that a child cannot waive their rights to Miranda.

Chairman Yeager:
Before we move on to testimony, are there additional questions from Committee members? I do not see any other questions. Please sit tight while we take testimony on the bill, then you will have the last word on Assembly Bill 251. At this time, I will open it up for testimony in support of the bill.

John Piro:
As Assemblywoman Krasner said earlier, we treat children differently in all other areas of our law, and it is time to respect that difference in cognitive ability here. Assemblywoman Krasner is doing that both in the juvenile Miranda portion of this law and in giving children a fresh start after they have messed up in the past so they can go on to become productive adults and leave the past in the past. We are grateful that she has brought this bill forward, and we ask this Committee to please pass this bill.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
Custodial interrogation is one of the most critical proceedings that may affect a child's future and their liberty. In some jurisdictions, as many as 80 to 90 percent of children waive their right to an attorney because they do not know the meaning of the word "waive" or understand its consequences. We support this bill because giving children a trusted adult and advocate is

important to supporting children during a vulnerable and extremely consequential circumstance.

We also support efforts to seal the records at an earlier time, allowing kids to move forward. They are applying for college at that time and a variety of other things, such as applying for employment and getting their lives started as adults. The sooner we can seal these records the better.

We also support efforts to permanently delete charges from children's records and will continue to work with the bill's sponsors to find the best mechanism through which to do so as they move into adulthood. We encourage you to support this bill.

James Dold, Chief Executive Officer and Founder, Human Rights for Kids:
This bill is critical to protecting the due process and constitutional rights of children in the justice system. We need to protect children's due process rights the most when the stakes are the highest. That is when they are facing the potential of spending decades in prison. It is impossible for someone to invoke their constitutional rights if they do not know what they are and do not understand them. That is why the American Academy of Child and Adolescent Psychiatry has adopted recommendations that children have an attorney present during questioning by police or other law enforcement agencies. The American Psychological Association has also adopted resolutions on criminal interrogations recommending that vulnerable suspect populations, including children, be provided with special and professional protections during interrogations. It is also noteworthy that the United Nations (UN) Committee on the Rights of the Child has confirmed that children should have access to legal assistance or to their parent or guardian during the interrogation process, which is specified in Articles 37 and 40 of the UN Convention on the Rights of the Child. As was mentioned previously, the National Registry of Exonerations shows that children are at high risk for false confessions, and that nearly 60 percent of the 14- and 15-year-old children who are later exonerated falsely confessed to a crime they did not commit. Nearly all children under the age of 14 falsely confessed. High profile cases like the Central Park Five highlight why it is so important to protect the due process rights of children.

I will highlight that, from a law enforcement perspective, this bill is important because it helps to ensure that children do not falsely confess and that there is reliable evidence in the courtroom. I always go back to the "my child" test. If this were your child and they were arrested, what would you want done? Would you want to be notified that your child has been arrested? Would you want the opportunity to talk with them and help advise them as they go through the process of interrogation? That is why this bill is so important, and we are very much in support of it. We hope the Committee will vote in favor of this legal protection for children.

Nedra Cooper, Private Citizen, North Las Vegas, Nevada:
As the mother of a son and grandson, I am in support of this bill for many reasons. It is unfortunate that minorities who happen to be African American are more likely than not to

be the ones who are misrepresented and who are not given fair due process. It is imperative when a child is arrested or detained that a parent be present to ensure the rights of their child are not violated. There are many reasons we would not want our children to be direct filed, and I do not want to list all those reasons. I am sure each of you already knows that juveniles' growth development is a lot less than adults'. Therefore, we need to keep children under consideration. When they are incarcerated with adults, they are highly subjected to victimization and assaults. They live with this and carry these traumas with them, and it affects them the rest of their lives. It is important under any circumstance because most minors are afraid, they are not sure of what will happen, and sometimes they are given false promises that help get a false confession. I prefer a parent to be there the minute the child is questioned, and that they are not asked if they want to have their parent there or if they want an attorney. When you are under duress, you may not understand exactly what that means. It may not be presented to the child in a manner so that they understand they can ask for their parent. If you want to see a story about a young man who lived this, view *Time: The Kalief Browder Story* to see what happened to him.

I want to thank you for being astute enough to put this bill on the books. I am also in favor of expunging at 18. Please do not decide to just seal because it is easier than adding to or rewriting the law.

Gianna Verness, Chief Deputy Public Defender, Washoe County Public Defender's Office:

We support Assembly Bill 251. Requiring youth to have an opportunity to consult with an attorney, parent, or guardian before waiving their Miranda rights and participating in custodial interrogation is extremely important. Juveniles are different. As you heard from Assemblywoman Krasner, the U.S. Supreme Court has recognized that fact. Juveniles are generally less mature and more impulsive than adults, and they have very limited understanding of the criminal justice system. Research also shows that juveniles generally do not comprehend the long-term consequences of the actions they take today.

Participation in a custodial interrogation requires a child to waive the individual constitutional rights that most do not understand. During my tenure with the public defender's office, I have had the opportunity to interview hundreds, if not more, of juveniles and to discuss what Miranda rights are and what they mean. When asking the youth about their understanding of what the Miranda rights mean, the typical response is usually some variation of, "I cannot talk back to the police officer. I cannot speak out of turn, and that I must sit there and be quiet and answer the officer's questions." Youth simply do not understand these rights, nor do they comprehend the consequences of waiving them.

As you heard Assemblywoman Krasner note, we have standards and laws that treat youth differently. Children cannot get married without parental consent, they cannot enter into contracts, and they cannot even obtain a driver's license without parental consent. There are a lot more things. Currently, in Nevada, a child as young as eight years old may waive their individual constitutional rights without consulting a parent, guardian, or an attorney.

We also support the lowering of the age for automatic sealing of juvenile records to 18. This change will give youth who are no longer active in the juvenile justice system the chance to move into adulthood with a clean slate and without the concern that the transgressions they committed in their youth will follow them into their adult life. We urge you to please consider passage of this bill.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
We are in support of Assembly Bill 251. We believe all youth should have access to resources they need to navigate the criminal justice system. Assembly Bill 251 will help increase fairness and better ensure justice for youth in Nevada. We urge your support for this legislation.

Tonja Brown, Private Citizen, Carson City, Nevada:
I am an advocate for the inmates and the innocent. I am in support of this bill and would like to echo the comments made by the previous callers. I believe this will help prevent wrongful convictions.

Nathaniel Erb, Policy Advocate, Rocky Mountain Innocence Center and Innocence Project:
The Rocky Mountain Innocence Center and the Innocence Project work to prevent and address the causes of wrongful convictions in Nevada and throughout the United States. It is for these reasons that our organizations respectfully request that the Assembly Committee on Judiciary pass Assembly Bill 251.

When our organizations submitted testimony [Exhibit F], we focused on the assets of the bill as related to interrogations, but we fully support the bill as amended as a whole. Assembly Bill 251 will provide important protections against the wrongful conviction of children in Nevada in a myriad of circumstances. One of the most serious circumstances that it will protect against is false confessions. Of the cases tracked by the National Registry of Exonerations, 49 percent of false confessions were from children under the age of 21 at the time of arrest. Wrongful confessions by four wrongly convicted adults in Nevada alone point to the compounded vulnerability of children to the same issue, which demands better protection under Nevada law. Children do not have the mental maturity to judge the consequences of confessions in the way adults do. They are more likely to mainly focus on the immediate potential outcome of making a false confession, such as going home. Juveniles are also more inclined to please authority and are more susceptible to manipulation from leading questions and threats. By requiring that children consult with attorneys, parents, or guardians prior to interrogation, A.B. 251 protects against false confessions and statements that may lead to a wrongful conviction and have led to wrongful convictions in adults in Nevada. It is for these reasons that the Rocky Mountain Innocence Center and the Innocence Project support A.B. 251 and request its passage by the Committee.

Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice:
As others have mentioned, we do not allow children to enter into contracts prior to age 18 for a reason. It stands to reason that we would not allow them to make important decisions about

their constitutional rights without first consulting an adult. We know from all our litigations that we have done and all the legislation we have passed in recent years that juvenile brains are different. We also know that children are our most vulnerable population. This bill is similar to what other jurisdictions have done. The amendment is particularly well done because it addresses many of the questions on this bill that we heard this morning.

I just want to highlight a couple of things in response to some of those questions. On the issue of expungement, it is very important to note that there is a judicial review process associated with expungement and that a court will decide whether juvenile offenses should be expunged and completely eradicated from the record. It is not the legislation that does it; it is a court that will decide. As Mr. Piro pointed out, it does not apply to sex offenses, murders, and things of that nature.

There have been a lot of questions about what custodial interrogation is. The answer is when you are not free to leave, and that does not get litigated. What does get litigated are the facts surrounding whether someone was free to leave. I think that is important to clarify because that standard is clear in the law. It is the facts about freedom to leave that are the aspect that gets litigated.

On the issue of Miranda itself, without this bill, what often gets litigated is whether a child who says something like, "I want to talk to my mom" is an invocation of Miranda. This makes it clear that he has an absolute right to talk to his mother and that the child or juvenile has invoked his Miranda rights.

This bill is well done, particularly the amendment that Assemblywoman Krasner has proposed. I urge everyone to support it.

Jared Luke, Director of Government Affairs, City of North Las Vegas:
I am speaking in support of Assembly Bill 251. The mayor and council of North Las Vegas have made protecting and educating our young people a high priority. The legal process for an adult can be very complex and confusing, so I commend the bill's sponsors for their wisdom in providing a bill to help young people navigate a complex process.

Darin Imlay, Public Defender, Clark County Public Defender's Office:
I just want to say the Clark County Public Defender's Office absolutely supports A.B. 251. When I ran the juvenile division and interviewed many kids and was involved with the kids, we saw the importance of their knowing their rights. Adults have a difficult time understanding their own constitutional rights and the Miranda warning. You can tell by many of the questions that it is confusing and difficult, so imagine a 16-year-old who does not understand this potentially facing certification, adult sentencing, many years in prison, and things like that. It is vital that they are aware of their rights and they have an opportunity to consult with an attorney prior to waiving those rights. Based on that, we are in support of A.B. 251, and I urge this Committee to pass this bill.

Aimee Holdredge, Private Citizen, Las Vegas, Nevada:
I am the mother of two young boys. I cannot imagine not being contacted if my children found themselves on the wrong side of the law and in custody. I would be incredibly furious if I could not support and advise my children and be able to provide representation for them in that situation. I do not know how I can teach my children to respect the law and authority if they are not given basic rights to protect themselves if they do get in trouble. There is so much in this bill that is important for our children to be treated as human beings, to give them a chance in life if they do get into trouble, and to become a functioning part of society. I hope the bill passes.

Chairman Yeager:
Is there anyone else in support? [There was no one.] I will close testimony in support. I will open for opposition.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
Unfortunately, we are here today in opposition to A.B. 251. Our officers carry the juvenile Miranda card, and we make every effort when we contact juveniles to notify parents that their child is in custody. However, there are many situations that might occur. Sometimes parents are not home or available. Sometimes juveniles are afraid, so they lie and give a false number to make it difficult to contact parents. Basically, as was stated in the testimony, this bill makes it so a person under age 18 cannot waive their Fifth Amendment rights at all. Every situation is different. Obviously, an 11- or 12-year-old is a completely different scenario than someone who is 17-plus and turns 18 in a couple of months.

I understand that Assemblywoman Krasner's heart is in the right place, but my fear is that this bill will cause more harm than good. We have situations where it is policy that we work with kids to divert them from the criminal justice system. We use The Harbor, the family justice courts, and the Family Justice Center in Clark County. To give you an example, if we had a case where a fight occurred between a 17-year-old and a 22-year-old and an officer arrived at the scene, based on this law, he could not get the 17-year-old's side of the story without having a parent contacted or without getting ahold of an attorney if the parent is not available. Like the concerns raised by Assemblyman O'Neill, this 17-plus individual would not have the ability to waive his rights and decide to speak with us about what happened. My fear in these cases is that, if we cannot get ahold of a parent or an attorney, we will make an arrest and take the juvenile to juvenile hall, and there will not be an opportunity to try to smooth out the situation or to avoid that consequence from happening. I understand the intent, but, as the bill and amendments are written, we are opposed.

Elizabeth Florez, Interim Director, Department of Juvenile Justice Services, Washoe County:
I reached out to the sponsor yesterday and appreciate her offer to meet with us regarding our concerns, but we were unable to do so before today's hearing. Assembly Bill 251 has two distinct elements. The first is the requirement that youths consult with either a parent or an attorney prior to custodial interrogation. The unintended result of this bill would likely be

that officers in the field, during the course of an investigation, will be unable to ascertain which youth could be eliminated as suspects, creating a situation where all will be arrested and brought into custody.

It is also unclear if this requirement would apply to probation officers who, in the normal course of duties, meet with juveniles at the office, in their homes, and in the community. Juveniles are required to meet with their parole officers as a condition of probation. These meetings are not necessarily voluntary. As written, this would greatly hamper the relationship we establish with the youth we serve and the court's orders we are required to follow.

For those in custody, youth will likely remain detained longer while awaiting either parental consultation or assignment of legal counsel. It is understood that increasing research around adolescent brain development suggests that youths may not have the capacity to waive their Fifth Amendment rights against self-incrimination. However, as written, this bill may create harm.

The second element regards sealing and the destruction of records. It is unclear, as written, if youth who are currently under the supervision of juvenile court with multiple distinct open cases would fall into this requirement. *Nevada Revised Statutes* 62B.410 allows juvenile jurisdiction until the age of 21. If a youth is placed on probation at 17 years 11 months, supervision may extend beyond the eighteenth birthday. The proposed amendment allows youth to petition for the expungement of all misdemeanor offenses, but not all misdemeanor offenses are created equal. For example, brandishing a weapon in a threatening manner, domestic battery, DUI, stalking, and violations of temporary protective orders are misdemeanor offenses. As a probation department that continues to embrace juvenile justice reform and that continues to divert the vast majority of youths away from formal court proceedings, we pride ourselves in developing relationships with them. We fear this legislation will result in extended detention time for our youth and will compromise public safety.

Michael Whelihan, Assistant Director, Department of Juvenile Justice Services, Clark County:

The Department of Juvenile Justice Services opposes the bill but supports the idea of juvenile rights. Custody for a peace officer can mean placing youth into handcuffs or giving them a verbal command to stay in the car, room, et cetera. The language is very broad and confusing. The difference between "custodial" and "detainment" are different, but in this language, it is unclear when the rights occur. The unintended consequences of this bill will be more youth being detained or arrested. Probation officers' primary roles are to protect the community, to be a role model and mentor, and to build relationships with children. This would be hard to do without having conversations.

Violation of probation arrests will increase. In 2019, our violations of probation dropped nearly 20 percent. As an example, a GPS violation is where a kid has on an ankle monitor, leaves the home, and goes to 7-Eleven. The parents are not home. We go by the house to

see what the kid is doing, but we cannot even ask the simple question, "Why did you leave your home?" After a simple drug test where he tests positive for opioids, we cannot ask the child, "Did you take your parent's prescription, or did you have a poppy seed muffin?" The unintended consequences are that these children will be detained.

Clark County has a program called "The Harbor," which has diverted over 15,000 youths since its inception in 2016, and the probation officers that work there help process these cases. Many misdemeanors are diverted. The Harbor is a successful, multiagency approach to diverting youth from entering the juvenile justice system. Questions, needs, and risk assessments are often used to determine the appropriate resources and services that are provided to the youth and family. The Department of Juvenile Justice Services diverted over 5,700 cases out of 11,700 in 2019. The Harbor will be significantly impacted, as well as the efforts made by juvenile justice to divert youth. If a parent or an attorney does not answer the phone, a schedule will have to be made, and it could be several days to a week later. Unnecessary detainment of youth will occur. As an example, we often do domestic violence cases in the home and the children may be victims. If the parent and stepparent are involved in this, police officers cannot ask the child if they were the victim or the perpetrator.

Assembly Bill 132 is a similar bill that would have a similar impact on juvenile detentions in the state. There are other pending certification bills that would add more youth to detention. Many juvenile detention facilities in the state of Nevada have limited bed space as does Clark County. This could cause overcrowding and concern for our juvenile detention facilities in our efforts to keep kids out of the system.

The Department of Juvenile Justice Services also has concerns about the bill when it comes to the automatic sealing of records. What is the impact when a child has a hold-open charge or is currently on probation past the age of 18? Would these charges be sealed and the child not be able to get the services they need prior to getting off probation?

Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:

Unfortunately, this morning we are coming in opposition to this piece of legislation that is taking steps to reform juvenile justice. The Clark County Juvenile Division strongly supports juvenile justice reform but, unfortunately, with the time frame in which we received this piece of legislation, specifically the amendment, we were unable to have a meeting with the Assemblywoman to discuss our concerns and come to some consensus. So, just to state my opposition on the record, on behalf of the District Attorneys Association, section 1 ignores that some of our children are foster children who come into the juvenile justice system.

I disagree with Ms. Bertschy that the term "guardian" would envelop the child welfare agencies. The child welfare agency is not a legal guardian of the child. Children are placed in the custody of a child welfare agency, making them the legal "custodian." It is a specific term of art and, therefore, section 1 would not apply to a child welfare agency child who may not have a parent.

In the past, we have had similar bills in different sessions where there was a lot of testimony from our public defenders concerning if the children had to consult with their parent prior to waiving their rights, the parent would influence the child to waive their rights. There was a lot of opposition to that. I want to make sure we are addressing that issue. If the issue is that the child gets the opportunity to consult with a parent or an attorney, and the parent is standing there, is that really what everyone wants? In the past, there was a lot of opposition to that. I have spoken with many of my juvenile public defender friends about some of the problems they have with parents influencing their child's juvenile justice case.

While I applaud the public defenders for being available by phone 24/7, many of our cases have multiple codefendants. For example, in the middle of the night, I may get a call about a series of robberies in a casino. We had one case recently with five children pepper spraying elderly people in the parking lots of casinos, disabling the elderly victims, and taking their property, including their vehicles, to drive to the next casino to do the same thing. There were five codefendants in that case. Going with the thought that a public defender may be available for one of them, oftentimes public defenders are conflicting off. They cannot represent all of those codefendants at the same time. I think we need to address that issue and make sure we have the resources available.

Current constitutional protections under U.S. Supreme Court and Nevada Supreme Court case law put the burden on the state to prove a waiver of Miranda and the voluntariness of a statement under totality of the circumstances. Just so this Committee knows, one factor is the juvenile's age, and another is the presence of the parent. Per the Nevada Supreme Court decision, police cannot mislead juveniles after reading them their Miranda rights.

While I love the banter because it makes these long hearings more exciting and entertaining, I want to make sure the record is clear. We have hearsay, which is an out-of-court statement—and there are exceptions to hearsay, such as excited utterances and party admissions—then we have Miranda. I do not want this Committee to confuse hearsay and statements made after a Miranda. For example, at a car stop for a broken taillight or an unsafe lane change, an officer approaches the vehicle and the 16-year-old screams, "I have a gun in my pocket"; that is hearsay and arguably an exception. Miranda would be after the officer takes that child out of the car, puts him in handcuffs, and provides him his rights not to speak to him. I want to make sure the record is clear, and we understand the difference between an out-of-court statement under hearsay and a statement after a Miranda is read.

Finally, it is good policy to allow children to seal their record and move on. We all make mistakes. We all make poor decisions as children and as adults. What is important is that we teach our children to accept their consequences, to learn from their mistakes, and not to let it define their future. How I teach my children is how I teach foster children and the delinquent children that I handle every day: you do not want to make a mistake you cannot come back from. I appreciate that we are clarifying that we want children to be able to move on. I just need this statute to be very clear that it is not intended to seal cases where we are still providing rehabilitative services to children. I do not want to close cases prematurely.

We do have a section under the statute for child victims of sex trafficking that automatically seals at 18. I want to make sure we are very clear that this is not the normal case. To address Assemblywoman Kasama's issue about why age 21 in the past, the reason is that juvenile court has jurisdiction until age 21. That is very significant because children may be arrested at 17 years and 11 months for offenses for which we want to provide them with rehabilitative services, so they can go on and become productive children and put my criminal division out of business. If I get you at 17 for committing an act, and we provide services, I do not want that case automatically closed at 18. We allow them to stay in juvenile court jurisdiction until 21 to receive services. That is our goal and why it was 21 years before because it was automatic. We have case management systems where the cases are sealed at 21. I need to ensure we do not have any issues there.

I want to support Ms. Florez from Washoe County Juvenile Justice Services. We are embracing juvenile justice reform. I am so proud of the steps we have taken to come forward and move on. I am looking forward to working with Assemblywoman Krasner and my colleagues from the public defenders' offices to work off this good policy foundation, and to make sure we do not have any unintended consequences. I see some solid opportunities here.

Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County:
Even though this is a policy committee, it is our only opportunity to express our concerns about the fiscal impact on Clark County. Clark County opposes Assembly Bill 251 as written and as amended due to the fiscal impact on Clark County. I reached out to the sponsor yesterday but was unable to connect with her and discuss our concerns, specifically as related to our Department of Juvenile Justice Services. My opposition is only based on the fiscal impact to the county and not the policy issues discussed today. Some of our policy concerns were mentioned by our assistant director of the Department of Juvenile Justice Services, Mike Whelihan. To my knowledge, we were not asked to submit a fiscal note on this bill; however, the fiscal note on this legislation is significant on our department and will necessitate opening, staffing, and operating additional housing units in juvenile justice detention at the cost of over $2 million a year.

Chairman Yeager:
Is there anyone else to testify in opposition? [There was no one.] I will close opposition. Before we go to neutral, I want to take us back to support and check for more testimony. I am under the belief that Kristina Wildeveld is on the phone and wants to testify in support.

Kristina Wildeveld, Private Citizen, Las Vegas, Nevada:
I am a private criminal defense attorney testifying in support of A.B. 251. This piece of legislation should be important to all of us. Section 1 would require a peace officer or probation officer to consult with parents or an attorney before an interrogation is conducted.

Sections 2 through 9 allow juveniles to put their juvenile behavior behind them by sealing their record at 18 and further provides a mechanism to reevaluate a child's record after his eighteenth birthday to allow parties to seal previously unsealable records. It recognizes children as children, as Assemblywoman Krasner indicated.

As someone with extensive experience working in the juvenile justice system, I can attest to the fact that our system still needs improvement. We encounter kids in the juvenile system who are often experiencing great crises in their life, not only because they are dealing with ordinary juvenile issues, but also issues that include homelessness, substance abuse, and undiagnosed, untreated mental health conditions. Children are brought into custody for everything, including a fight at school, graffiti, or homicide. The focus of representing a child in juvenile court includes helping them deal with their life problems to ensuring they do not return to court. The model of and representation in adult court are much different from the representation of a child in juvenile court. The juvenile system is focused on rehabilitating children, not tricking them. Children under arrest do not understand Miranda warnings and are only familiar with the words they know from television. The warnings for children include asking a child if he or she would like a parent or an attorney present. Under this bill, a child cannot waive counsel or a parent being present at that point. They are not given a choice they do not understand. Instead, it recognizes that children are different from adults. The Supreme Court has recognized that teens are too young to exercise and comprehend their rights, so they become easy victims of the law. This legislation fixes that and recognizes that children are, in fact, different. To waive that right is a powerful thing that children in this situation do not understand, and this bill provides for procedural protections for juveniles while recognizing the characteristics of youth.

Sections 2 through 9 remind us that juvenile justice is centered on rehabilitation, and the system is supposed to be designed to ensure the underlying issues that contribute to delinquent behaviors are addressed while the individual is still young. Studies have consistently shown that juveniles have a higher chance of achieving rehabilitation than their adult counterparts. Because the juvenile's brain is still developing, it is easier for a juvenile to change his or her behaviors; therefore, the acts that one commits while still a juvenile should not be used against them if they have contact with the system again as an adult. Instead, it is consistent with what we preach to kids in the juvenile court: we are here to help you—not that, if we cannot, we will make sure this comes back to haunt you in the future as an adult.

Until we fix the inadequacies in the juvenile system—the lack of options to help kids in the system—we need to put safeguards like this in place. Some youths are facing lifetime sex offender registration even if they stay in the juvenile system. As mentioned, there are collateral consequences to having felony adjudication in the juvenile system that may impact college applications, scholarships, employment, housing, and future arrests.

There are many real situations, such as the one I am currently dealing with in the case of Matthew Hutchinson in Lovelock. Our client was arrested months after his eighteenth birthday—53 days to be exact. He was offered a deal that considered parole. Because of his juvenile history—which consisted of delinquent acts as well as typical juvenile acts, including plugging the toilets in juvenile detention, name calling, and throwing pencils in juvenile detention—the judge in the case sentenced him to life without the possibility of parole rather than what the negotiations contemplated. The court, 13 years ago, relied on records that, if they had been sealed on his eighteenth birthday, would not have been used to

sentence him to life without the possibility of parole, which he is still serving today. He also would not have falsely confessed if he had had an attorney or parent present when the police questioned him. Matthew Hutchinson, 14 years later, is now a grown, mature, and different individual than the one who was sentenced based on juvenile history that was without consultation of an attorney and should have remained just that, history. His adult counterpart received seven years for the same offense.

It is incredibly important that our state keeps abreast of the latest trends, data, and research concerning juvenile rehabilitation. This bill is another step in the right direction. This bill will help make our juvenile justice system more effective, give meaning to the words "childhood matters," and show that when we call a child a child, he cannot have his childhood used against him once he magically becomes an adult at age 18.

I know Ms. Duffy answered the question about sealing at the age of 21, but again, this would mean all juvenile records would be automatically sealed at 18. Only those who contemplate still being on a probationary term until their twenty-first birthday would remain unsealed unless sealed by the court. I strongly urge your support of A.B. 251.

Chairman Yeager:
I will close supportive testimony. Let us go to neutral testimony on Assembly Bill 251. Is there anyone who would like to offer neutral testimony? [There was no one.] I will close neutral testimony at this time and turn it over for concluding remarks.

Assemblywoman Krasner:
Assembly Bill 251 is not just about giving a child a fresh start and a second chance. It is also about parental rights. Just think about it. An adult rapist must be informed of his Fifth Amendment constitutional rights or he goes free, but a 17-year-old son or daughter of yours who gets caught drinking a beer, which is a misdemeanor, can be arrested, taken to jail, and questioned without your consent. This is wrong. I urge your support of this bill.

I would also like to thank the two people who have contacted me to be added on as cosponsors, Assemblyman Orentlicher and Assemblywoman Bilbray-Axelrod. If anyone else wants to sign on as a cosponsor, everyone is welcome.

Kendra Bertschy:
This bill helps put in safeguards to ensure we are not wrongfully convicting our youth. It is disheartening to hear from the opposition that law enforcement feels their only option is to arrest youth when they cannot engage in custodial interrogations on scene. We disagree and think there are other options available for law enforcement to continue with their investigation.

I would also note that this bill does not require an attorney and a parent to be present. The language in the bill indicates that the officers must reach out to only one: the parent, the legal guardian, or the attorney. If a parent is not available, there would be an attorney present.

The concerns regarding conflict of interest have been resolved in other cases, and we will certainly be able to resolve those issues if we are called upon by multiple individuals at one time. There are some concerns about the language, specifically with some terms. I appreciate that conversation and look forward to working with the stakeholders to make sure we are covering all bases to fill those gaps to ensure we are protecting our children.

Chairman Yeager:
At this time, I will close the hearing on Assembly Bill 251. That takes us to our last item on our agenda, which is public comment. Public comment is a time to raise matters of a general nature that are under the jurisdiction of the Assembly Committee on Judiciary. I will open public comment.

Ben Iness, Private Citizen, Reno, Nevada:
I am a graduate student at the University of Nevada, Reno School of Social Work, as well as an intern with the Progressive Leadership Alliance of Nevada. As many of you know, the federal and state eviction moratoriums are set to expire on March 31, 2021—a mere two weeks from today. Meanwhile, according to the Kenny Guinn Center for Policy Priorities, hundreds of thousands of Nevadans are at risk of eviction, and Nevada will experience eviction surges statewide. Without increasing tenant protections, this looming crisis will hurt those who are most vulnerable in our state, who are people of color, undocumented renters, and low-income individuals and families. These communities have already been disproportionately impacted by COVID-19 due to job loss and economic insecurities at no fault of their own. It has been one year since Nevada officially recognized the COVID-19 pandemic. Although our recovery is closer than ever, I urge you to take steps so no Nevadan has to fall through the cracks and be left behind. You have an opportunity to do so by implementing the protections in Assembly Bill 141 and Assembly Bill 161.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
My brother, Thomas Purdy, was 38 years old when he was hog-tied and asphyxiated to death by Reno police and the Washoe County Sheriff's Office.

Today, I want to talk about Phillip Serrano, who was also killed by Reno police. Phillip Serrano was 44 years old when he was shot by Reno police and killed on September 23, 2018. Phillip was under the influence of drugs, and his sister had called the police. Police approached Phillip, asked if he needed help, and he told them he did not want their assistance and tried to leave. District Attorney Christopher Hicks did not release any body camera footage or his justification of Phillip's murder until November 4, 2020. He waits in hopes that the community will forget. I can assure you that Phillip's daughter Desiree and his sister Michelle will never be able to forget that their loved one, while in crisis, was shot multiple times; 51 shots were fired in total. The report states that multiple witnesses said Phillip indicated through his vehicle window that he was going to park his vehicle on the curb and speak with police. As his vehicle slowly rolled toward the curb, officers unloaded on Phillip.

The people I talk about and my brother's life matter. They are someone's brother, sister, friend, lover, son, and daughter. Please do not support bills that further protect police. Please support bills such as Assembly Bill 268 and Assembly Bill 271 that provide transparency and accountability for law enforcement. My family and so many others are counting on you.

Chairman Yeager:
Is there anyone else for public comment? [There was no one.] We will close public comment. Is there anything from the Committee? [There was nothing.] Right before we started this morning, we released agendas for the rest of the week. We will be starting at 8 o'clock on the next three days. We have one bill tomorrow and two bills each on Thursday and Friday. As we get to the end of the week, we will talk about next week. This meeting is adjourned [at 11:13 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
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 proposed amendment to Assembly Bill 58, presented by Aaron Ford, Attorney General.

Exhibit D is a proposed amendment to Assembly Bill 251, dated March 15, 2021, presented by Assemblywoman Lisa Krasner, Assembly District No. 26.

Exhibit E is written testimony dated March 16, 2021, presented by Assemblywoman Lisa Krasner, Assembly District No. 26, regarding Assembly Bill 251.

Exhibit F is written testimony dated March 16, 2021, submitted by Nathaniel Erb, Policy Advocate, Rocky Mountain Innocence Center and Innocence Project, in support of Assembly Bill 251.