MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-First Session
March 19, 2021

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:06 a.m. on Friday, March 19, 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 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:

Assemblywoman Heidi Kasama (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Sandra Jauregui, Assembly District No. 41

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Ashlee Kalina, Assistant Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager
Traci Dory, Committee Secretary
Linda Whimple, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Joel Just, President, Community Association Management Executive Officers, Inc.
David Tina, Legislative Chair, Nevada Association of Realtors
Michael Buckley, Chair, Executive Committee, Real Property Section, State Bar of Nevada
Garrett D. Gordon, representing Community Association Institute
Charvez Foger, Ombudsman, Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry
Brook Hopkins, Executive Director of Business and Industry, Criminal Justice Program, Harvard Law School
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Dmitri Shalin, Professor of Sociology; Director, Center for Democratic Culture, University of Nevada, Las Vegas
Addie Rolnick, Professor of Sociology; Member, Race, Gender and Policing Program, William S. Boyd School of Law, University of Nevada, Las Vegas
Mary E. Bacon, Attorney, Spencer Fane LLP, Las Vegas, Nevada
Nick Shepack, Policy and Program Associate, American Civil Liberties Union of Nevada
DaShun Jackson, Director, Children's Safety and Welfare Policy, Children's Advocacy Alliance
Christine Saunders, Policy Director, Progressive Leadership Alliance Nevada; and representing Nevada Immigrant Coalition
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Caleb Green, Chair, Racial Justice Committee, Las Vegas Chapter of the National Bar Association
Annemarie Grant, Private Citizen, Quincy, Massachusetts
Kostan Lathouris, Private Citizen, Henderson, Nevada
Jim Hoffman, representing Nevada Attorneys for Criminal Justice
Tonja Brown, Private Citizen, Carson City, Nevada
Jennifer P. Noble, Chief Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association

Jessica Walsh, representing Clark County District Attorney's Office
Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson
Troyce Krumme, Vice Chairman, Las Vegas Police Managers and Supervisors Association
Ed Poleski, Assistant City Attorney, Criminal Division, Las Vegas City Attorney's Office
Calli Wilsey, Senior Management Analyst, Intergovernmental Relations, City of Reno
Eric Spratley, Executive Director, Nevada Sheriffs' & Chiefs' Association
A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Quentin Savwoir, Deputy Director, Make It Work Nevada, Nevada Housing Justice Alliance

Chairman Yeager:
[Roll was called. Committee protocol and rules were explained.] We have two bills on the agenda, and we are going to take them in order. I will now open the hearing on Assembly Bill 237.

Assembly Bill 237: Revises various provisions relating to real property. (BDR 10-22)

Assemblywoman Sandra Jauregui, Assembly District No. 41:
The genesis of Assembly Bill 237 was a result of Assembly Bill 335 of the 80th Session, which made it out of both houses with unanimous support. It was introduced in partnership with the Community Association Management Executive Officers (CAMEO) and the Nevada Association of Realtors. It was something we worked on together for almost 18 months. Assembly Bill 335 of the 80th Session accomplished two things. It streamlined the residential selling process for the organizations who do the behind-the-scenes paperwork, and it established uniform fee caps for homeowners' association (HOA) resale packages, HOA demands, and HOA transfer fees.

We are here today to clean up language regarding the HOA portion of Assembly Bill 335 of the 80th Session. Assembly Bill 237 will add in language to clarify that association management companies cannot charge resale closing fees other than those in statute. Once A.B. 335 of the 80th Session was signed into law, we saw junk fees begin to emerge. Also left out of A.B. 335 of the 80th Session was the consumer price index increase of no more than 3 percent to the transfer fee, which we all agreed we would add to the resale demand and transfer. During drafting, we added it to the demand and resale and accidentally left it off the transfer costs.

New to this bill is an enforcement mechanism. Assembly Bill 237 will also give the Commission for Common-Interest Communities (CIC) the ability to impose a fine of not more than $250 for the association for violation of the fee structure. The reason we added this is some associations continue to charge more than they are statutorily authorized to.

I have, on two personal occasions, signed buyers where their association was charging $100 and $150 more than what they were allowed to on the transfer cost of the HOA. This will give the CIC the authority to enforce the laws that we passed in this body in 2019.

I am here today with the association and Realtors who do not normally come to the table together, but the association management companies and Realtors are here to show that this was a bill we all worked on in good effort together for many years and want to make sure it is fully implemented to its intent. I will now turn it over to Joel Just with Community Association Management Executive Officers, Inc. (CAMEO) and then David Tina on behalf of the Nevada Association of Realtors.

Joel Just, President, Community Association Management Executive Officers, Inc.:
Community Association Management Executive Officers (CAMEO) is composed of HOA management company executives. I want to thank Assemblywoman Jauregui and the Realtors for all their help in addressing the industry concerns as laid out for you in the amendment [Exhibit C]. We are strongly in support of the amendment which, in our opinion, will continue the Assemblywoman's hard work of rooting out the bad actors of the association management world and allow professional organizations like CAMEO, whose members play by the rules, to continue to make their HOAs the best they can be for every homeowner.

We are grateful for the ongoing partnership, not only with the Assemblywoman, but with the Realtors who sit around the table—now socially distanced—year in and year out as we work collaboratively on finding solutions to mutual problems within the industry. The members of CAMEO fully support the amendment. Thank you.

Chairman Yeager:
Committee members, before we move on, I neglected to mention that there is a proposed amendment on Nevada Electronic Legislative Information System from Assemblywoman Jauregui that deals with section 1 [Exhibit C].

David Tina, Legislative Chair, Nevada Association of Realtors:
On behalf of more than 18,000 members of our Realtors, we are pleased to have the opportunity to testify in support of A.B. 237 and the intent behind it. Let me thank Assemblywoman Jauregui for bringing this legislation forward. It is an important consumer protection bill. Let me also acknowledge the partnership with CAMEO in working through this issue with us. We have seen and support the proposed amendment being brought forward by the Assemblywoman. It reflects the discussions we have had over the interim with all the parties involved.

I would like to take the rest of this time to discuss why additional fees charged for HOA of resale packages are problematic from a consumer point of view. We have especially seen the practice of excessive fees being charged to consumers by smaller management associations in that we cannot get demand statements when they ask us for fees that in turn are not with the regulation, therefore making it harder to close a transaction in a time where we do not

have a lot of homes. The last thing we want is to have these problems stop us from closing. We appreciate the hard work Assemblywoman Jauregui and our partners in CAMEO have done in working with us to address this important consumer issue. Tiffany Banks is here on behalf of the Realtors to answer any technical questions you may have on the language. I am here to answer any questions you may have from the practitioner point of view.

Assemblywoman Jauregui:
I would like to turn it over to Michael Buckley on behalf of the Real Property Section of the State Bar of Nevada to walk the Committee through the remainder of the bill. The Real Property Section of the State Bar needed a vehicle for cleanup language to their section of the *Nevada Revised Statutes* (NRS), and I was happy to provide A.B. 237 to accomplish this.

Michael Buckley, Chair, Executive Committee, Real Property Section, State Bar of Nevada:
We routinely encounter provisions in statutes that we think need correction and have been doing this for many sessions. This time in particular, we are in the process of publishing an extensive manual on real estate law by the State Bar. In preparing that manual, we have come across a number of changes which need to be made. The section does not have a policy position, so our goal is to have laws that read and make sense and make corrections when possible.

There are several technical changes and then a couple more that require a little explanation [Exhibit D]. The reference to Article 2 of NRS Chapter 116 in sections 2, 4, and 5 has another statute in it, so we corrected it. In section 6, the amount that could be charged was changed in 2019, so this is a conforming change to that amount.

When Chapter 116 was originally enacted, it referred to a certificate in section 7. Over the years, Chapter 116 has been amended and what is now delivered on a resale is called a resale package. We corrected the reference where there was reference to a certificate being the whole resale package. We changed that to the resale package rather than the certificate.

Sections 8 and 9 are a little more technical and require some explanation. Chapter 107 originally referred to a trustee sale occurring in accordance with the execution sale statutes. *Nevada Revised Statutes* 40.430 states that a judicial foreclosure still cross-references to an execution sale. There is a difference between an execution sale and a judicial foreclosure. In an execution sale, someone has a money judgment against a person and they can record that judgment and fine whatever the property the judgment debtor owns in the county which is subject to an execution sale. There is the right of the judgment debtor to designate which property can be sold. What we have done in section 8 is that in a judicial foreclosure sale, there are people who are entitled to notice—for example, junior lienors and guarantors—but the execution sale statutes do not refer to that. Section 8 is intended to make sure that whoever was entitled to notice in a mortgage foreclosure gets notice. That was missing from the execution sales statutes, so we added a reference to a foreclosure sale.

In section 9, and in the case of a mortgage or a deed of trust, the debtor has already agreed which property is to be sold, so there is no reason for the judgment debtor to designate which property is to be sold. In Chapter 106 and Chapter 107, it falls to the lender to say if there is more property that can be sold; it is up to the lender, beneficiary, or mortgagee to make that determination.

Sections 10 and 11 deal with judicial partitions. If more than one person owns property and they cannot agree what to do with the property, there is a procedure in NRS for partition of the property. Either the court will divide the property or sell the property. The statute—which I do not think has been amended since 1911—refers to an abstract of title. Abstracts of title are not used anymore. What is used is a litigation guarantee. We updated the statute to refer to a litigation guarantee rather than an abstract of title.

In section 12, there is an exception for what we call the one action rule if you are proceeding under the Uniform Commercial Code (UCC). This is very technical. The UCC is Chapters 104 and 104A of NRS, so we added the reference to Chapter 104A.

I need to give a little background on sections 13 and 14. There was a problem with mortgage fraud in the recession, so both of these statutes were amended to require an assignment of the mortgage or deed of trust—or a subordination of a mortgage or deed of trust—to be recorded. Before that, it just said they may be recorded.

Our purpose is to make the statutes understandable. As presently written, it refers to a mortgage of personal property or crops before 1935. In 1965, the UCC was adopted and said that any lien on personal property is governed by the UCC. Our intent is to remove the antiquated reference to a personal property mortgage.

Section 15 is technical. There is reference of a trustee and a deed of trust, and it should only be singular. With section 16, we had clarifying legislation in 2019 that a person could waive the benefit of protection for a landlord of real property. There are two dates in this statute when the notice has to be given to people affected by the waiver, and we clarified that it is whichever is the latter of the two dates since there are two dates.

Chairman Yeager:
Are there any questions from Committee members?

Assemblywoman Cohen:
My question is regarding the sales under foreclosure and when there are multiple properties in section 9. Say a creditor has five properties, and four of them are worth the value of the fifth one. Selling either the group of four or the one would cover the debt, and the debtor does not have the right to say they want to sell the four but keep the fifth one. Do they have a say in how that gets done?

Michael Buckley:
We are talking about a deed of trust or mortgage where the borrower encumbered these properties to secure the debt. There is actually a conflict in the statute. For example, the execution sales statute states that the debtor can designate which parcel is to be sold. In the mortgage statute—mortgages have to be judicially foreclosed—the statutory covenants actually specify that it is the lender who decides which property is to be foreclosed. We are trying to make it consistent between the statute which covers a mortgage or deed of trust and the statute that covers just a general execution sale.

In answer to your question, if you have a mortgage and there are multiple properties covered by that same mortgage or deed of trust, the debtor does not have the ability to say which property is sold. That was decided at the beginning when the loan was made. When the loan goes into default, it is the lender who controls the foreclosure process rather than the borrower.

Chairman Yeager:
I am going to take some questions on section 9 and try to see if I understand what we are doing. Obviously, the terms used in real estate can be very technical. In section 9, we are dealing with two different types of sales of property. The first one was the execution sale. The way I understand it is if someone owes money to someone—so that person would be the debtor—and as a result of that, property is going to be sold to satisfy the amount of money they owe, the person who owes the money gets to choose which property is going to be sold to satisfy that debt. It is not the person who is owed the money, but the person who owes the money who makes the decision if it is an execution sale. Do I have that right?

Michael Buckley:
Yes, that is correct. If you owe someone money and the creditor goes to court and gets a judgment, that judgment can be recorded and it is a lien on all the property that person owns. That is the execution sale to enforce the judgment. That is the time when the judgment debtor can say, Sell this one, not that one.

Chairman Yeager:
In contrast to that, we talk about the judicial sales, which are really related to mortgages. I do not know how many homeowners we have on the Committee or watching in the public, but I think most of us, if we are homeowners, did not pay cash for the home. We had to take out a mortgage and get a loan to buy the home. When you agree to that and sign those documents, there is a provision in there that says if you default on the mortgage, then that property you are defaulting on is the one that will be sold. That goes through a different process—it is a judicial foreclosure—but it would be the reason the person who holds the property could not say, Well, I want to hold on to this property where I have defaulted, but I want to sell some other piece of property to satisfy it. Do I generally have that right?

Michael Buckley:
Yes, you do. Just to clarify, I would say that most foreclosures are nonjudicial, so there is not even a court action. Judicial foreclosure is very rare. In a judicial foreclosure, after the

sale, the borrower and any junior creditor have a year after the sale to redeem the property. Most lenders would go for nonjudicial sale where there is no redemption period.

Chairman Yeager:
Thank you for the clarification. On the execution sale side of this equation, if someone goes to court or they have a judgment and it is recorded as a lien, are courts involved in the process of selling property to satisfy that debt? What role, if any, does a court play in that process?

Michael Buckley:
My knowledge on this is because I edited the chapter on attachment, judgment, and executive sales in our practice manual. The civil office of the sheriff's division handles those sales. The courts are not involved. Once the judgment is issued, it is covered by the sheriff's department.

Chairman Yeager:
We are looking forward to the publication of the reference manual. Are there any questions on either part of A.B. 237, either the first part dealing with HOA and resale package fees, or the second part dealing with real property and real estate? [There were none.] Is there anyone who would like to give supportive testimony?

Garrett D. Gordon, representing Community Association Institute:
I am a partner at the law firm of Lewis Roca, and today I am representing the Community Association Institute and its 1,300 members. We speak for over 3,000 community associations across the state. We want to put on the record our support of A.B. 237 and the amendment. I would like to thank the sponsor for bringing the bill and the amendment forward.

Chairman Yeager:
Is there anyone else who would like to testify in support of A.B. 237? [There was no one.] Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in neutral?

Charvez Foger, Ombudsman, Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry:
I am an Ombudsman representing Nevada Real Estate Division. Thank you.

Chairman Yeager:
Is there anyone else in the neutral position? [There was no one.] I will close neutral testimony and ask Assemblywoman Jauregui to make any concluding remarks she would like to make on A.B. 237.

Assemblywoman Jauregui:
Thank you for the opportunity for bringing A.B. 237 forward, and I urge your support.

Chairman Yeager:
I will close the hearing on A.B. 237 and open the hearing on Assembly Bill 243. Assemblyman Orentlicher will be presenting, and there is an amendment on Nevada Electronic Legislative Information System.

Assembly Bill 243: Revises provisions relating to the administration of justice. (BDR 14-785)

Assemblyman David Orentlicher, Assembly District No. 20:
Assembly Bill 243 includes three provisions to make our criminal justice system fair and help remedy the discriminatory impacts of law enforcement on people of color and other disfavored persons. I would like to thank several people who inspired the provisions in A.B. 243: Tony Sgro, Alanna Bondy, Julianna Melendez, and Mary Bacon. Also, five of my colleagues at Boyd School of Law: Stewart Chang, Frank Rudy Cooper, Eve Hanan, Addie Rolnick, and Dmitri Shalin.

There are three principles that inspired me to address the discriminatory impacts of our law enforcement system. The principles are: (1) Kids do not think like adults and we should not punish kids like adults; (2) Justice should be blind. It is a venerable principle in the law that is exemplified by Lady Justice; and (3) When legislating, we should take full advantage of the expertise of Nevadans [page 2, Exhibit E].

As we have heard during discussion of other bills, children are not mature decision makers at the age of 18. Their judgment is impaired and they act impulsively. Section 7 would ensure that judges, at sentencing, consider the youth of an offender who is convicted as an adult [page 3]. Sometimes, as we heard from Assemblyman Miller, we transfer juveniles to adult court and prosecute and sentence them as adults. We already have a provision in existing law that at sentencing, the judge should take into account the fact that we have a youthful offender. Right now, the statute says up to age 18, and Assembly Bill 243 proposes to change it from 18 to 21. We would take into account impaired judgment decision making up to age 21, not 18.

The second principle is Lady Justice, who we all know is blindfolded, which is an ancient root principle of justice being blind. In the Bible, we see that "Ye shall not be partial in judgment; hear out low and high alike [page 4]. Decide justly between the Israelite and the stranger alike. Justice, justice, shall you pursue." Exodus 23. It is such an important principle that the color of your skin, how wealthy you are—none of that should be taken into account by the decision maker. While justice should be blind, unfortunately, it is not [page 5]. If we look at data on what happens in our law enforcement system, minorities are more likely to be stopped by police, more likely to be arrested by police, more likely to be charged with a crime when they are arrested, and if they are charged with a crime to be charged with a serious crime. After being charged, they are more likely to be convicted of a crime and then given a more serious sentence. In every step along the way, you see racial disparities and other disparities against marginalized groups.

To try to make sure that justice is truly blind, sections 8 and 9 would make justice blind at the charging stage [page 6]. Information relating to a suspect's race will be redacted from documents reviewed by prosecutors while making their initial charging decision. They do not need to know—and should not know—the suspect's race or other identifying information that might indicate something about their race or ethnic background. Prosecutors do not need that information, so this bill will require that documents reviewed by prosecutors would have that information redacted. It is not hard to do if you work with pdf documents to redact information. This is for the initial charging decision. Sometimes, witness testimony is important to be able to know and identify the information, so after the initial charging decision, the prosecutors would be able to look at identified information for purposes of witness collaboration and other things. For the most part, that would not be necessary. The charging decision without the identifying information will be sufficient.

The third part is to take full advantage of our state's criminal justice expertise [page 7]. We are doing some very important things this session to address the inequities in our law enforcement system. We want to continue that effort in future sessions, and we have nationally recognized experts in criminal justice in Nevada, including faculty at the Race, Gender and Policing Program at the University of Nevada, Las Vegas, and also at the University of Nevada, Reno, and other of our institutions of higher education. Sections 3 through 5 create an advisory task force on police reform so we can draw on best practices in adopting legislative reform in future sessions [Exhibit F].

I am joined by a few people. Julianna Melendez was going to be with us because she is a youth legislator who was the inspiration for the blind-charging part of this. Due to technical difficulties, she is not able to be here, but she sent me a written statement [Exhibit G]. I will read her written statement and then we will hear from Brook Hopkins, who has done research on disparities and law enforcement. Kendra Bertschy is another copresenter, and we have some people who are available to answer questions that may come up.

Julianna Melendez is a Valley High School student and a Nevada Youth Legislator and the inspiration for the blind-charging provisions of this bill. This is what she would have said if she could have joined us. [He read from Exhibit G.]

> Good morning, members of the Assembly Judiciary Committee. My name is Youth Legislator Julianna Melendez, representing Senate District 10. I am here in strong support of this bill, due to the fact that it is an issue close to both my heart and the hearts of Nevadan Youth. As the Nevada Youth Legislature is allowed to propose one bill draft request (BDR) per session, it is one of my responsibilities to draft a BDR relating to an issue concerning the youth. I chose to focus on the juvenile justice system and proposed blind charging regarding any cases against juveniles in the state of Nevada. The inspiration behind this is that I attend Valley High School in Las Vegas, made up of over 92 percent minorities, and with the most refugee students of any other high school. My peers have told me firsthand that they are over-policed in schools, and those who have encountered juvenile system personnel have

> told me that they felt discriminated against because of the color of their skin. I had one peer from another high school say she was racially profiled by both a police officer and a detective, who accused her of committing a crime. Their reasoning? She was Black.
>
> With the rise of social movements like Black Lives Matter, this is an issue that can no longer be ignored. Although my BDR was chosen as the official 2021 Nevada Youth Legislature bill, we have discussed it as a body various times and the blind charging portion of the bill was redacted. However, I am so glad to see a bill moving forward with this idea I originally had, and seeing it applied to a larger age group.
>
> I have done my research and blind charging has already been successfully implemented in San Francisco, so it is a very realistic proposal. Please strongly consider supporting this bill, as it affects the leaders of tomorrow just as much as the leaders of today. Thank you for your time.

Thank you, Julianna. I am sorry you could not join us today, but I am grateful for your bringing this idea to my attention.

Brook Hopkins, Executive Director of Business and Industry, Criminal Justice Program, Harvard Law School:

I am here today to discuss a large research project that I led as executive director of the Criminal Justice Program at Harvard Law School. This is a study of Massachusetts, but the reason it is relevant today is because we determined that initial charging decisions were a key driver of racial disparities in incarceration sentences in our state. That is very relevant to the race-blind charging provision in A.B. 243. Our findings are consistent with research of others who studied different states and the federal system and found racial disparities in charging decisions throughout the country. This research points to the need to address racial disparities at that charging stage, which is what A.B. 243 seeks to do.

We analyzed all criminal cases for a three-year period in Massachusetts. This was motivated by the knowledge that people of color are vastly overrepresented in our prisons, which is true across the country. We found that initial charging decisions were a key driver of racial disparities in incarceration sentence length. We found that, on average, Black defendants received incarceration sentences that were nearly 169 days longer than white defendants. When we controlled for the initial charging severity level, that disparity dropped down to just under 43 days. When we looked at Latinx defendants, their sentences were 148 days longer than white defendants, but when we controlled for initial charge severity, again, that dropped down to 26 days. This regression analysis tells us that the initial charging decisions were playing a huge role in creating those disparities at the sentence length stage.

This finding in itself is not necessarily surprising because Massachusetts had a sentencing scheme which is similar to every other sentencing scheme that I am aware of, where the more severe your charges, the longer your sentence is. There are, of course, other factors, but that

is the key factor. It makes sense that there is a correlation between the severity of your charge and the length of your sentence. However, we are controlling for initial charge, and sentences are based on your final conviction offense, which is your sentence based on what you are actually convicted on, not what you are charged with. When we looked at final conviction events, we found that they were a similar severity across race. Although defendants of color were charged more severely, ultimately, they were convicted of offenses that were about the same level of seriousness. In fact, for Black defendants, their final conviction offenses were slightly less serious than white defendants. Nevertheless, their ultimate sentences were longer. They were convicted about the same level of seriousness, their sentences were longer, and much of that disparity in sentence length can be attributed to those initial charging decisions. These findings are consistent with other research that has been done in other states and in the federal system that has documented disparities in charging decisions.

This is what A.B. 243 seeks to tackle through race-blind charging. The hope is that if you can get some of these disparities taken care of at that initial stage, then you do not have as bad a problem with the fall on racial disparities in the system as a whole. My research and other research that has been done in this area confirm that policies that address this disparity in the initial stage would be beneficial.

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

Other jurisdictions have already begun to adopt procedures to create race-blind charging systems. During the presentations by law enforcement before this body, you were provided with information that there currently are racial disparities and overrepresentation of minorities within our criminal justice system here in Nevada. This bill will create a more fair and equitable system to ensure that we reduce the discriminatory impact on law enforcement and charging decisions to ensure there is not a disproportionate application of law in charging documents. The time taken up front will help us save time, motion work, jail time, and potentially post-sentencing hearings. More importantly, it will enhance the community trust in our criminal justice system.

As you heard, what would occur in a race-blind charging system would be redactions. It would redact the personal identifying factors of that individual regarding race. In defense practice, we currently engage in redactions when we provide discovery to our clients. For example, social security numbers. We do not provide that to ensure it does not fall into the wrong hands. That is what we are asking for in this race-blind charging system. In jurisdictions where they have paper documents, this can be done as simply as with a pen, paper, Sharpie, and making photocopies. Luckily for a lot of jurisdictions in Nevada, we receive documents through pdf, so you can do it through Adobe Acrobat. There are other charging softwares that could be utilized; however, at this time just simple redaction tools that are free on Adobe Acrobat could and should be utilized.

I know there might be some concerns regarding the *Valdez-Jimenez* hearings [*Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 163 Nev. Adv. Op. 20 (April 9, 2020)] that you

have heard. It is the bail hearings. However, there are systems that can be put into place to ensure the charging officer is not the one conducting the *Valdez-Jimenez* hearings. During the special session, this body passed a resolution that racism is a public health crisis. We believe this is a fiscally responsible way to reform the criminal justice system. We urge your support of A.B. 243 to ensure that justice is blind and race is not a factor.

Chairman Yeager:
Assemblyman Orentlicher, are you going to go over the other portion of the bill?

Assemblyman Orentlicher:
We are working from the conceptual amendment [Exhibit F]. The first part, sections 2 through 5, creates the task force to advise us through the Advisory Commission on Administration of Justice (ACAJ) going forward to study different aspects of our law enforcement system and make sure we have policing done in a racially unbiased way and improve the fairness of our system. The composition would include different experts in law enforcement, representatives of law enforcement, public defense, and community members to give the different areas in which they might provide study and recommendations for us.

The second part is section 7 to raise the age from 18 to 21 for youthful offenders for purposes of sentencing. For offenders under 18 who are sentenced as an adult, their youth can be taken into account at the judge's discretion, and a reduction in their sentences can be allowed. This would raise the age from 18 to 21. The final sections talk about the redaction of the identifying information. As Ms. Bertschy indicated, it is a very simple thing to do. It adds some small up-front costs in the prosecutor's office, but this is a small price to pay for racial equity. There will be long-term savings because if we make our system fair and eliminate the unfair charges, it will save a lot of money in terms of court costs, prison costs, and other costs that will far outweigh any up-front impositions in terms of the redactions.

Chairman Yeager:
Are there any questions from Committee members?

Assemblywoman Nguyen:
While I agree with most of the intent of what you are trying to accomplish, I would like to start with the section regarding the task force. As you know, I am the Chair of the Advisory Commission on Administration of Justice right now, and it is already a committee which is made up of 24 to 26 individuals. I am looking at this subcommittee-type task force that would be appointed by the commission, and I am trying to figure out how this would work. How did you come up with this equally long list of individuals who would be consisting of the task force? I am seeing this logistically being turned into a 50- to 60-person commission and board. I am wondering how that makeup came out, and how you decided to place it within the statute regarding to the ACAJ.

Assemblyman Orentlicher:
In terms of the size and adding to the commission, I would think of this as having an advisory commission. I have been on a lot of boards that can always benefit by having

subcommittees that specialize in certain things and can study an issue more intensively than the whole board can, and then the subcommittee can report back to the full board. I would think of this task force as a specialized advisory body to the full commission that can draw on the expertise of academics and practitioners in the state and then they can report to the commission and amplify the abilities of what the commission can do. Commission members have a lot of demands on their time, and I think this is an effective way to foster their activities.

Dmitri Shalin, Professor of Sociology; Director, Center for Democratic Culture, University of Nevada, Las Vegas:
When we were looking at the composition of the task force, our agenda was the skill mix, the kind of expertise that will help us address the type of reforms we have in mind. We proceeded on the assumption that the problems we face with police operations are systemic. It is hard to pick up one area and try to fix it without addressing other areas. By combining these various expert skills, we believe we should be able to provide a comprehensive analysis of what we have in place right now and suggest, based on best practices in various jurisdictions, what we can do to improve the operations in our state.

Addie Rolnick, Professor of Sociology; Member, Race, Gender and Policing Program, William S. Boyd School of Law, University of Nevada, Las Vegas:
To answer the question, this task force is conceived in part to be primarily made up of academic and policy experts. The idea is that this task force could more slowly look at various options for reform and how they might interact comparing them to national models. It is meant to address a sort of vacuum at the state level of an academic think tank, an academic-focused organization in watching some of the process. Last summer, in particular, there was widespread interest in enacting reform and enacting reform quickly, but I can tell you from that experience that with reforms that are adopted quickly often we do not know what they will do or how they will interact with other reforms, and sometimes they can go in the wrong direction. It was meant to focus on the need for sustained study in comparison of potential reforms and then to advise the other bodies that would be involved. It has a membership that encompasses a number of different actors but is primarily composed of academics, as opposed to primarily composed of system actors, which is a better description of the ACAJ. We are hoping to fill that advisory gap.

Assemblywoman Nguyen:
I just have concerns. I cannot even imagine logistically how a commission of 26 people would come together under Open Meeting Laws to even be able to appoint 11 to 12 members. I understand the policy aspect. I am curious if there are other states that put in statute some of these think tanks.

I also have concerns about the task force that is addressing Nevada police reform. It appears that of the entire committee makeup, there are only two people who are actually in law enforcement to even be a part of that, even policy conversation. I have concerns when it comes to that.

I agree with the evaluation of blind-screening. I know when the topic was first approached it was discussed with me. I believe I spoke with Ms. Bacon about it. There has been some enabling language to allow some of these jurisdictions to take advantage of some of the software that was available for no cost by several nonprofits, and now I see that it is mandated in statute as proposed in this bill.

I know we had talked about this, and Ms. Bertschy had talked about how a lot of things are in pdf, but I have noticed that many other things are still handwritten. We have many police departments that are using handwritten documents. All voluntary statements, to my knowledge, are done in handwriting. How are these law enforcement screening agencies supposed to enact this blind-screening process when you do not have everything electronically? I know that some of the programs Ms. Bacon informed me about sounded great. They work in a completely electronic database, and you would be able to insert those things seamlessly. What do you do with a large percentage of people still using handwritten documents?

Kendra Bertschy:
I would note that defense attorneys receive probable cause sheets or witness statements, which are handwritten. We have had conversations with attorneys in rural jurisdictions who receive those paper copies. When they have to do redactions, they use a Sharpie or pen to redact the material and make a photocopy and send that photocopy off. There are other tools that can be utilized. The way we receive those documents in Washoe County is in a pdf. It is still handwritten documentation that can be placed into Adobe Acrobat and redacted that way. You can also use Wite-Out tape. There are a lot of other ways to ensure redactions can occur.

Assemblywoman Nguyen:
I just have concerns. You mentioned the rurals, but as you know and other committees and the public know, I obviously do this, so I do a lot of redactions. Documentation in the urban settings— I would say 99 percent of all the voluntary statements I get are in writing. It is just something to keep in mind.

Assemblyman Orentlicher:
I wanted to see if Mary Bacon wanted to add anything or respond to Assemblywoman Nguyen's question. If there is a better appointer than the commission, certainly that is easy to fix. One of the things that has been important to me since I came to the University of Nevada, Las Vegas (UNLV) is that we are a state institution, and it is important that we are available as a resource to policy makers and building bridges between our policy experts and our policy makers. I think that is very important. A good model for this is in Texas. Every two years, they commission a study by the University of Houston. The health policy experts are to study an important health policy issue and report to the legislature. I think it is important for the state that we build bridges between our policy experts and our policy makers.

Mary E. Bacon, Attorney, Spencer Fane LLP, Las Vegas, Nevada:
That technology is still on the table for the future, but as of right now what can be implemented is redacting. Attorneys redact a significant number of documents that they turn over anyway, so it certainly does not foreclose upon that happening in the future. I hope that it can come to fruition one day.

Assemblyman O'Neill:
I would like build upon a little bit of what Assemblywoman Nguyen said on this task force. From my position, it has implicit bias already. There is no mention of the district attorney's office being a member, or courts. These are all part of the criminal justice system. It only has one member of the Legislature. Who appoints them? Is it a Democrat, Republican, nonpartisan? I see more questions in this. The size could be reduced. Several of these people are overlapping. Why would the courts and the district attorneys be left out? It seems they would be an important part of this.

Dmitri Shalin:
In our proposal for the task force, police accountability is modeled on similar task forces created in other counties and states. It is fairly common for states to have such a body examining best police practices and proposing reforms to legislators.

The exact composition of the task force is open to deliberation. It could be reduced, indeed. As Assemblyman Orentlicher emphasized, it is the issue of dividing labor and having the best possible skill mix. I should point out that we do have various representatives of police force and people representing experts. Adam Garcia of the Police Services Southern Command who oversees University police training in southern Nevada, advised our group and he should govern [unintelligible] so he could be a member of this committee. As for adding representatives from the Office of the Attorney General, of course, we are all for it. We are prepared to leave it to legislators and the Office of the Governor to optimize the skill mix to finalize specific members of this committee pursuant to the suggestions that Assemblywoman Nguyen just made.

Assemblyman Orentlicher:
We are definitely open to suggestions on how to improve the task force. As you can see, the conceptual amendment has changes from the original bill, and this is certainly a work in progress. We are happy to consider other suggestions to make sure we have the best composition.

Assemblyman O'Neill:
I appreciate the openness to revisions or amendments to the proposed bill. Another question I would like to ask is they got someone's name from Massachusetts. We talk about Lady Justice being blind. What I heard and read when Assemblyman Orentlicher sent out the article from *The New York Times* is that they can charge someone who has extensive charging versus another person, but at the end when it comes to conviction—which is what dictates sentencing—it seems to balance out. In one study, which was actually done by two different individuals independently, they found other issues that had nothing to do with race

necessarily. It had to do with past criminal history and other open charges that resulted in longer sentencing in some of the increased initial charging documents. I am trying to figure out what you are trying to gain. You do a study. You have charging, but at the end of the day, Lady Justice does prevail when the sentencing comes out the same—neutral across the racial board. That is what I understood from it. Did I get that wrong?

Brook Hopkins:
In our study, we found that the final conviction offenses were of similar severity, but the sentences for defendants of color were much longer. The disparity in sentence length can be traced back to the initial charges, so the initial charges were playing a larger role than any other factor. We looked at criminal history and that played almost no role in racial disparities. It was really the initial charging decision that was driving the significant sentence disparity at the very end of the process.

Assemblyman O'Neill:
I am still confused. You are saying they charge more severely for people of color, but at the end, the conviction and the sentencing did not have any racial bias in it.

Brook Hopkins:
No, that is incorrect. The conviction offenses were of similar seriousness. The sentences were longer. We do not know this for sure, but one very common hypothesis is that the vast majority of cases of convictions in the criminal system are obtained through plea deals. If you charge someone with multiple sentencing enhancements, charges that carry mandatory minimums, they are at risk for a very significant sentence at the end. They feel compelled to plea to what the prosecutor asks for, and the prosecutor can often get defendants who agree to a longer sentence if the initial charges carry a potentially longer sentence. It is likely through the plea bargaining process that those initial charges are impacting the sentence length at the end.

Assemblyman O'Neill:
Are you aware of any studies done by Stanford University recently?

Brook Hopkins:
Studies about what?

Assemblyman O'Neill:
On racial implicit biasing and the use of the algorithm failing to demonstrate any statistical difference in racial outcomes?

Brook Hopkins:
I am not familiar with that study.

Chairman Yeager:
Assemblyman O'Neill, if you have a copy of that study, feel free to submit it. I do not know if anyone has had a chance to look at it, so I am not sure if questions about it are going to be productive.

Assemblyman O'Neill:
It was part of what Assemblyman Orentlicher sent out last night. It said that it failed to show any implicit bias in redacting the racial information on initial charging.

I am beginning to think that the country has made a mistake. I keep hearing how 18- or 19-year-olds should not be held responsible, yet we let them go to war for us and vote. Maybe we should start thinking about changing some of those laws and protecting us better.

Chairman Yeager:
I will note for Committee members and members of the public that there has been a reference to a *New York Times* article. Unfortunately, we cannot put it on the website due to copyright issues, so if you are interested in finding that article, I am sure a Google search would produce it.

Assemblyman Orentlicher:
The study Assemblyman O'Neill is referring to was done in a jurisdiction where they were not seeing racial disparities in charging, so the algorithm did not make a difference because they were not having the problem that we are seeing generally. We do know that in most jurisdictions we do have racial biases in charging. If you apply the blind-charging in the jurisdictions where there are disparities in charging, you will get a benefit.

Assemblywoman Cohen:
There is also a United States Sentencing Commission study from 2017 that has key findings saying Black male offenders continue to receive longer sentences than similarly situated white male offenders. Maybe we could also add that as an exhibit.

My question is getting back to the task force, and I think it is more of a recommendation that you consider some other members of the task force, such as some geographic variables in Nevada including someone from the rurals to make sure that we have it considered. Obviously, there are issues throughout the state. Was that considered?

Assemblyman Orentlicher:
We tried to respond to all of the suggestions, and we have not been able to get to all of them yet. We will aim for the work session to have a better list of commission members. I appreciate your suggestion, and I will follow up with you and other Committee members to make sure we incorporate all the good ideas for the composition of the task force.

Assemblywoman Cohen:
I would like to send out a special recognition to my fellow Valley Viking, Ms. Melendez. I really appreciate the work she did, and I am sure our other graduate from Valley High School in the Legislature, Assemblywoman Torres, would back me up on that.

Assemblywoman Hansen:
I have a question regarding section 8, subsection 2, paragraph (c) [Exhibit F]. We talk about race to be redacted, and the other things such as name, language spoken, and physical description. What about sex? Is it your hope that at some point—I am curious as to what identifiers could be implied as implicit bias? Is law enforcement softer on women? Are they harder on women? Is sex part of an identifier that we need to ferret out as well?

Assemblyman Orentlicher:
That is a very good question, and I am not sure about the answer. It is certainly something I will look at.

Assemblywoman Hansen:
Perhaps it is a little rhetorical on my part, but I am trying to connect the dots. I am sure that everyone here wants to ferret out when there is any sort of unfair practice in law enforcement or in the courts. I am having a hard time connecting the dots from charging that we are saying the charging officer or person has some sort of implicit bias that goes down the line to the sentencing side. Who is guilty of the bias? The charging person? The judge? While I can appreciate what we are trying to accomplish, how do we get from point A to point B? I do not know if this is how we do it. I know that if I were working at a business and there was a robbery and I needed to call to say and identify the suspect, I am going to identify their sex, their color, their height, and weight to help identify that person. When I make that call and say what their race is, it is not racially motivated. It is not some angst. It is just to help identify the subject.

The other part of this that I am wondering about is when we talk about the charging point. How much of the charging is reflecting the environment at the moment? The intensity of the crime or the suspected crime or the suspect and the interchange that is going on that it is more of an emotional situation than it is saying the race of the person is my bias. I know this is more commentary just to add to the flavor of what you are trying to get to and to offer some perspective and get some understanding.

Chairman Yeager:
Before I take the next question, I would like to go to Ms. Bacon to address some of the concerns about the initial charging. I had a conversation with her a while back, and I think she did a good job of explaining it.

Mary Bacon:
I want to make clear that no one is guilty of implicit bias. We all have implicit biases, so for better or worse, I certainly think we are not trying to make a judgment. I think it is just factually unfortunate what has happened. They have done studies on district court judges

and federal judges, and the only thing they found was essentially we all have implicit biases. I do not think anyone is guilty of anything and certainly not trying to do anything intentionally. We are just trying to correct for something that is unfortunately there that results in unfair outcomes.

As far as identifiers, things like hair color and eye color can certainly add to racial perceptions. If I am stating that the suspect has blonde hair and blue eyes, it can give you a different idea on who that suspect may be instead of if I said he has very dark eyes and black hair. That is what it is trying to account for.

As far as the gender question, my understanding is that apparently this is focused on race and to correct racial implicit bias. What was the other question?

Assemblywoman Hansen:
Mine was more commentary than the initial question about gender.

Mary Bacon:
As a follow-up, when you said that if you were in a bank and it was robbed and you were reporting that you were in the bank and it was robbed and the suspect is a six-foot-two, white gentleman, 180 pounds, that would obviously be hugely helpful and we need to catch that suspect. That makes sense. The difference is in the blind-charging. You would still be able to identify that suspect for the police, and the police would still hopefully arrest that suspect. The charging attorney would say that the suspect went into bank, robbed it, three witnesses identified suspect one as the person who robbed the bank. The police later apprehended the suspect who robbed the bank and go from there. It is not like we would lose any information in the policing process or ability to catch that suspect from your description. Obviously, if you are reporting a crime, we need all that information to get the person immediately. The difference is that the charging attorney would just say that the witnesses identified the suspect. They would not say, The witnesses identified this six-foot-two, white, 180-pound gentleman.

Assemblywoman Summers-Armstrong:
Thank you for taking on this very challenging issue. We appreciate your courage and fortitude in bringing this forward. I submitted some suggestions to you earlier today that I hope we can discuss later, and they do include suggestions about including people from the rural communities and other disciplines. I would like to clarify—which I think may be a little lost in this—that this subcommittee to the larger committee that is already existing is really meant to be an academic look at this issue as opposed to how the current committee is set up. Am I correct in my understanding?

Assemblyman Orentlicher:
That is correct. As you said, you have the larger commission and this would be more of a technical advisory task force to provide focused information on one aspect of the problem that they are thinking about. It is not intended to duplicate what the commission does as opposed to providing specialized information for the commission.

Chairman Yeager:
Before we move on, I want to recognize Professor Rolnick, who I think wanted to add something to that question.

Addie Rolnick:
There have been a number of questions, and I appreciate the question about the focus of this task force, but there have been a number of questions about the composition. I would like to clarify two aspects of those questions. There are a lot of suggestions for particular voices that might be good additions, for example, someone with expertise in policing in rural areas or committee members from certain areas. Those are good suggestions. I do not know if there is anything magical about the precise current list. My understanding is that everyone involved is open to some discussion about exactly how different voices and perspectives would be represented.

To your larger question, you are correct. This is not meant to duplicate other bodies. For example, the advisory commission is mostly made up—when you think of policing, you can think of system actors if you are thinking about the criminal justice system, and then you think of people in the community who could help community members who are impacted by this system and then you could think of academics or policy analysts outside. Our existing mechanisms draw heavily on the system actors.

We have had questions about the district attorney and law enforcement representatives. I think we do a good job at drawing from the expertise of the people involved in this system to find out what will work. When reforms are successful, they are a combination of the experiences of system actors and then outside researchers, which is to say that the researcher's job is to take a step back to compare how things have happened in other jurisdictions, to look at how various aspects of this system function together, and to take a larger view.

There is a third voice, which would be impacted community members. There are a lot of conversations that could be had about the precise makeup of the commission, but the purpose of the task force is to be a research body and an academic policy advisory body. To look into these questions, we can harness the ability to do significant research and the time to do significant research if it is primarily composed of academics. It can take input from those involved for having a stake in how this system works, but it is designed to actually do something different than some of these other bodies. That might speak to some of the other questions we have had about why certain people are not included or if it duplicates what is already there. It is meant to do something different.

Assemblywoman Summers-Armstrong:
Although this might appear to be unwieldy if you look at it as if they were a part of the existing committee, I think the role the Assemblyman Orentlicher is trying to get at is notable and an important perspective. As Ms. Rolnick said, the current status is always people who are part of the system, and when we bring other voices in who are not in it who are affected by how the system works, it is helpful for them to see from a distance what is happening so

they are able to see it as an overview. I think there is some benefit to using our wonderful educational institutions to help us get some insights on what we can do. I do not believe that has any type of innate bias in that. It is just academic. We hope that the academic process will help us inform better solutions.

Regarding the initial charging document, is it a consistent form what is used throughout all of our law enforcement agencies? Do they have a form that they use where we could quickly redact information so we could have blind-charging? I know it is unwieldy and that at this time without software it can be a little time-consuming. Is anyone counting the cost in life what it means when a person is overcharged? I think that is being missed in this, and I would like to speak to that. When a person is overcharged at the beginning of this process, if they do not have the wherewithal,—either with legal counsel or their own understanding how to get this system to work—they could be charged on something that could hugely ruin their life. I think there has to be some real honest discussion about what that means at the beginning to be severely overcharged and then have to fight to bring the charges down to what is reasonable when that should not be the case at all. We know that there is bias.

This is very frustrating to me personally because I know this exists and maybe people do not understand that I think that we can have a real honest conversation. There have been plenty of studies that show this has a real life-changing effect on people—Black people, Brown people. Overcharging is a huge thing, and if the charge statements could be redacted to make this playing field even, if I have to use Wite-Out and a marker to save someone's life, then we should use Wite-Out and a marker.

Chairman Yeager:
Assemblywoman Summers-Armstrong, I want to go back to your question. I do not think we had a chance to have someone answer it. I think the question was if the charging documents were consistent or is there one document in use throughout the state. I think the answer to that is no, but I do not want to answer the question because I am not presenting the bill.

Kendra Bertschy:
Unfortunately, no. They are not all the same. Just to clarify, it is not just one document that the district attorneys would get. I am sure they will expand on this in their testimony. The probable cause reports are different by jurisdiction. In some, it is as simple as a box area when they click the box regarding race and others where it is typed in.

Assemblyman Wheeler:
We keep saying it is Wite-Out and Sharpie and then copy the paper. I am pretty sure that the charging officers use video evidence quite a bit to decide what charge to give, whether that be body camera, surveillance video, et cetera. Redacting a video is not impossible, but it is time consuming and tough. While you put that person in jail waiting for arraignment because you have not brought the charges yet—he is just under arrest on suspicion—how long do we wait while we redact all this? With a bureaucratic government and running it through their steps to make sure everything is redacted, how does this affect the person's right for a speedy trial?

I know that district attorneys use their own investigators. When they see something, they will send an investigator out and maybe look at more charges than the charging officer gave. Since that investigator works for the district attorney's office, who is the charging officer as put in this statement? Would the investigator no longer be able to look at these videos, look at the descriptions, or talk to witnesses about descriptions? I am seeing this as a logistical nightmare.

Assemblyman Orentlicher:
The bill itself only requires redactions from documents. It would be much more challenging to redact a videotape. It is my understanding that it is an uncommon situation where the video footage is viewed before the charging decision. We understand we might not be able to reach 100 percent of cases, but if we can reach 99 percent or 95 percent, I think that is very important.

Kendra Bertschy:
For your information, the bail hearings according to *Valdez-Jimenez* should actually occur prior to that charging decision, so that would get to a 72-hour hearing, and that is something I am sure we will be hearing more about that we discussed in our presentation—the issue "prompt" is still up for debate. The way the system is supposed to work is that person is supposed to be able to have their *Valdez-Jimenez*, their bail hearing, prior to even when the district attorney has made final the charging decision.

I agree with the statements Assemblyman Orentlicher made why that is the reason this is specific to blind-charging for the documents because of the issues that arise with body camera footage and surveillance videos and redacting those.

Assemblyman Wheeler:
You have to have initial charges for the bail hearing, otherwise the bail cannot be set to the crime, and from there they go on with other charges. Is that correct?

Chairman Yeager:
Sometimes. It depends. I do not want to speak to it because I have not practiced in that area for a while, but I believe we might have someone on the phone who can address that question. We have differences around the state, and that will surprise no one. In Clark County, in particular, they have dedicated attorneys and all they do is work in screening, which basically means they review arrest reports and make all the charging decisions. They would not have an investigator who is making that determination. I cannot speak to the rest of the state. I believe the rest of the state does not have the luxury of that many employees to be able to dedicate people to the charging decisions, so that is certainly something that has to be taken into account if this bill were to move forward.

Assemblywoman Hardy:
Assemblyman Wheeler asked most of my questions about being able to view videos, surveillance, or photos in making these decisions.

Assemblywoman González:
Is there any point throughout the process where a district attorney gets a case and then goes back to change the charges? While the intent is to provide no racial discrimination—as a district attorney, if I get a case, is there any point in that process that I can change? Will I know the person's race at that point?

Kendra Bertschy:
Yes, they can change and amend charges, and it can be done even as late as at the preliminary hearing. Yes, you are correct; they would presumably know the person's race at that point if they are doing it during the hearing.

Assemblywoman González:
In the places where they have implemented this, have they seen it happen where they can go back and change? People of color are disproportionately impacted more. Are we seeing that trend at all?

Mary Bacon:
I want to make an initial note on the video. In other jurisdictions, my understanding is that if the police wanted to provide a video in advance, they could simply say something in the police report. Then the charging attorney has the benefit of knowing there is a video which identifies the suspect. As Assemblyman Orentlicher stated, obviously, that could be reviewed later.

As to the next question, district attorneys certainly maintain the ability to change the charge. This bill is trying to find a lot of implicit bias. The bill requires that if you are going to change the charge, you have to put the initial charging decision in the file, and if you are going to change the charging decision, you have to record in the file why you are making that change. Implicit bias is the result of automatic decision making because you have ten thousand decisions to make in a day, and to help streamline that process, you start putting people in buckets. By having to slow down and record the reason why you are changing your decision and what the difference is in having to state Okay, we received ten more witness statements that positively identified this person as compared to two rocky witness statements before. That alone interrupts a lot of that implicit bias, so this certainly does not change if someone is racist or trying to do something, so yes, the system can be gamed. A lot of the intent of the bill—at least in my understanding—is interrupting implicit bias. You are more likely to interrupt that bias if you made the initial charging decision without race information and then you have to record a reason why you have changed your mind. It forces your brain to slow down and stop those automatic processes.

Chairman Yeager:
Before we move onto testimony, I have a few questions, and I am going to call this the shotgun round. I think these will be simple questions, but I want to help with some of the legislative intent.

In the task force we are talking about, do we anticipate that all the members who would be appointed would be Nevada residents? Some of them are specified as certain people who obviously live in Nevada, but, for instance, we have a social scientist with research experience in hate groups. I am curious if we have people who fit some of these categories in Nevada or if not, was the intent to perhaps go outside the state's borders to find those individuals?

Dmitri Shalin:
Yes, we do have some specific individuals in mind who have published on the interfaces between the police and some of the extremist groups with a lot of important data who are members of a department at the University of Nevada, Reno. I believe that while the ultimate decision belongs to the Legislators and the Governor, we do have some specific individuals in mind who are residents of Nevada.

Chairman Yeager:
When I look at section 5, it talks about what the task force is tasked to do, and I see reference to statewide guidelines and examining guidelines. Is the intent that this task force, whatever they came up with, would have the force of law in policy or would it be up to the decision makers in the state to decide whether to implement guidelines that were produced from the task force?

Addie Rolnick:
The idea is that the task force would make recommendations. It would not pass laws or identify anything that has the force of law. It would do careful research and that research would then be a resource for lawmakers.

Dmitri Shalin:
We are investigating best practices so we will be able to provide legislators with good quality information for decisions they are to make. As academics are experts in the area of policy policing accountability, we should be able to provide expertise which otherwise might not be available.

Chairman Yeager:
Section 7 is where we are changing the age from 18 to 21, where a court is to consider youthfulness of particular individuals, and where the court has the discretion to depart from a mandatory minimum by 35 percent. The way the law stands now, that provision in section 7 applies to individuals who are under the age of 18, so they are referred to as juveniles. That language is being stricken and we are going to 21, and now we are using the phrase youthful and mature adult offenders or youthful adults. It seems to me that we should still use the word "juvenile." I want to get it on the record that the intent is not to say we are only going to look at this for individuals between 18 and 21. I think the intent was that if you are under 21, then you should get this consideration. Assemblyman Orentlicher, was it your intent that the current practice will continue, or are we just augmenting who gets the consideration?

Assemblyman Orentlicher:
Your characterizations are correct. If we need to revise the language, we will do that.

Chairman Yeager:
When we talk about the blind sentencing on page 3 of the amendment, there is some new language being added where the identifying information that would be deleted includes the location of arrest, violation, and/or residence. I understand the intent behind location of arrest and/or residence, but it does seem to me that the location of the violation might be something pertinent for a charger to have in front of them. If someone goes into a commercial establishment and starts to commit crimes randomly, that is very different than if there is an individual confrontation out in front of someone's yard. I do not think we need to discuss it any further, but I think I might want to consider keeping location of the violation in as something that might be pertinent to the charging decisions.

Is there anyone who would like to provide testimony in support of A.B. 243?

Kendra Bertschy:
Our office supports this bill, and we really appreciate Assemblyman Orentlicher's hard work on ensuring that we take the great criminal justice reforms that we made last session and continue them this session into a different aspect of the criminal justice system. We believe that the task force as well as blind-charging decisions will help to curb the implicit bias to make our system more fair, equitable, and to rebuild trust in our criminal justice system.

Nick Shepack, Policy and Program Associate, American Civil Liberties Union of Nevada:
We are testifying in strong support of A.B. 243 today and thank Assemblyman Orentlicher for bringing this bill. One of the oldest and most recognizable symbols of justice is that of Lady Justice, blindfolded with the balance scale in one hand and the sword in the other. She symbolizes the ideal system of justice. Unfortunately, we have not reached that ideal system of justice. We have unceremoniously stripped the blindfold from her face, tipped her scale, and thrust her sword into the heart of our most vulnerable community. The system is, in fact, so far unblind that youth legislator Melendez has spent much time working on this bill. At her young age, she has become acutely aware that the justice system designed to protect her acts as a steel trap for our Black and Brown community members, disproportionately punishing them for behavior no different than their white counterparts.

The opposition will say that the implementation of this bill will be hard, that it will be tedious and time-consuming, and that it will cost more than we think. While these are valid points, we must take a step back and ask the community how hard it is to continue with disparate sentencing based on race, as to how tedious it is to navigate a system rife with racial bias. We must ask what has been lost to an unblind system of justice and how much this system has cost the community. I ask you to place the needs of the community on one side of Lady Justice's scale and the bureaucratic difficulties of the district attorney's office on the other side and see which way it tips. Lastly, we must be honest. In every conversation about reform, the community, the defense bar, and the advocates are always greatly outnumbered

by law enforcement. We ask that you support this bill, support impacted communities, and support blind justice.

DaShun Jackson, Director, Children's Safety and Welfare Policy, Children's Advocacy Alliance:
On behalf of the Children's Advocacy Alliance, I speak in support of A.B. 243. We believe this bill is essential to ensuring that all youth, despite their race, are treated equally. We also believe this bill moves in the right direction in breaking down racial biases and disparities.

Christine Saunders, Policy Director, Progressive Leadership Alliance Nevada; and representing Nevada Immigrant Coalition:
We are in support of A.B. 243. The global pandemic and rise of the Black Lives Matter movement created a watershed moment for change. Thousands of Nevadans have taken to the streets to demand an end to racist policing and police violence. We would like to thank Assemblyman Orentlicher, who supports this bill to address the systemic racism and disparities in the criminal justice system. It overcriminalizes communities of color. While we appreciate the Legislature's having introduced a number of police reform measures this session, 120 days is obviously not enough to solve the problem. Assembly Bill 243 will create an ongoing space for this discussion to occur with a diverse group of stakeholders and experts. We are very supportive of this bill.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I would like to thank you for hearing this bill and would like to bring a few issues to light. The *Las Vegas Review Journal* just published an article on civilian review boards, and this is why that task force proposed in A.B. 243 is necessary. Frequently, the civilian review board recommendations have no real power. They go to the sheriff, but the sheriff gets to do whatever he wants and no one is keeping statistics on the percentage of times the sheriff implements the civilian review boards' recommendation.

Secondly, the civilian review boards cannot conduct their own investigations and have to rely on internal affairs. Internal affairs sometimes bends over backwards to side with the officer, even going so far as providing excuses for their conduct. Thirdly, evidence collection takes too long for the civilian review boards, up to several months, which could sometimes result in loss of videos and evidence. The question that needs to be asked—and I think has come to light recently—is who is watching the watchman? This bill provides for someone to watch the watchman. It is no longer okay for them to police themselves and say there are no problems but then secondarily ask why everyone is really upset with law enforcement. It is time for us to address that, and I believe the task force would do that.

The other two parts of this bill are very important as well. In 2016, we all realized that overt racism is way bigger of a problem than we all thought, but we all knew that implicit racial bias was hiding within the crevices. Blind-charging helps us work on that issue. As Assemblywoman Summers-Armstrong said, it is a small cost to pay to work on justice.

To address Assemblyman O'Neill's question, if our study finds that we are doing things right, then good for us. That should not stop us from studying the issue.

Lastly, the part of the bill deals with youthful offenders and recognizing them as youth and gives the judges permission to do that, that is also good policy. Thank you for hearing this bill, and I urge its passage.

Caleb Green, Chair, Racial Justice Committee, Las Vegas Chapter of the National Bar Association:
I am here to support A.B. 243. I want to thank Assemblyman Orentlicher and the presenters for bringing this bill and doing a great job in presenting it this morning. I would like to point out that on August 6, 2020, the state of Nevada adopted Senate Concurrent Resolution 1 of the 32nd Special Session, a resolution that urged public action in recognizing racism as a public health crisis. Mainly, that resolution provides that systemic racism and structures of racial discrimination create generational poverty; perpetuate debilitating economic, educational, and health hardships; and disproportionately affect people of color, causing the single most profound economic and social change challenge facing Nevada. We believe that A.B. 243 seeks to address several aspects of this underlying institutional racism addressed in S.C.R. 1 of the 32nd Special Session that has adversely impacted our criminal justice system.

We believe that it is very well established that Black and African Americans are subject to higher levels of criminalization and harsher collateral consequences and sentencing in comparison to their other counterparts. The Las Vegas Chapter of the National Bar Association is clear that implicit racial bias and prejudice of prosecutors in the criminal charging system have exacerbated the disparate effect of the criminal justice system on Black and Brown communities. We believe that A.B. 243 will mitigate implicit bias and the implications of race from the decisions to charge and prosecute. This will also mitigate implicit bias by establishing a race-blind charging system for all Nevada prosecuting officers to use when deciding whether charges should be filed against the person. Put simply, criminal charges should be based upon behavior, not the race or any other demographic information related to the accused. This bill captures this very squarely and therefore we urge your support for this bill.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
My brother was killed by police in Reno. He was hog-tied and asphyxiated during a mental health crisis. I would like to thank the sponsor of this bill and all involved in its creation. I support this bill fully, especially since the amendment includes someone directly impacted by police violence, who lives in Nevada as they are subject-matter experts, and their input in police reform should be valued. Something that families truly hope for is change, not just talking about it. Making actual impact to put steps towards that, and I feel this bill does this, and some victims want to be a meaningful part of that change.

I have seen the success of advisory boards such as the Advisory Commission on the Administration of Justice and the recommendations made to your Legislature by them. The idea that a task force will be there to hold law enforcement agencies accountable and not

leave it up to the agencies themselves is in itself a huge step towards greater transparency and provides hope. I also believe the suggested makeup of the board will provide various impactful insight. I also support and appreciate race-blind charging systems, just to even the playing field for all. If you need an impact in Nevada, I can direct you towards many. Thank you again for sponsoring this bill, and please support it.

Kostan Lathouris, Private Citizen, Henderson, Nevada:
I am testifying today in support of A.B. 243. I support the creation of a Nevada police reform advisory task force because I believe it is important to evaluate and study the system of criminal justice in Nevada. If we have the experts, we should include them in the study and recommendations regarding criminal justice. I am an enrolled member of a federally recognized Indian tribe, and I am also an elected official with that tribe. However, today I am testifying in my personal capacity as an attorney who has practiced almost exclusively for over five years regarding federal Indian and tribal law. That is why I believe it is important that we include a legal scholar with indigenous people as part of the task force, and why I also think it is important that we include someone who is familiar with issues related to police relations with minority communities, especially those in Indian country. Criminal justice in Indian country can be complicated, inconsistent and, unfortunately, unfair. It is not unfair necessarily as a result of state law, but federal law which has limited the inherent sovereignty of tribes, including Indians within reservations, which oftentimes leaves tribes dependent on states to be able to enforce certain laws within Indian country.

Problems can also arise with state law enforcement when there is a lack of understanding of Indian country because, again, laws in Indian country can be complicated and confusing. In particular, I have experienced working on a case with my own tribe and the office of the tribal attorney where we had a county sheriff try to enforce civil regulatory laws over our members. Under certain laws, they are not able to do that. Although we thought the case would be easily resolved, what ended up happening was the local state law enforcement challenged the creation and existence of our reservation boundaries. That caught us completely off guard, and we did not understand why they took that position. That case resulted in six years of litigation, ultimately being filed for certiorari with the United States Supreme Court, which it denied, thankfully, and we successfully defended the boundaries of the reservation. That case involved federal law, civil rights violations, and the challenge to the reservation boundaries, which we found to be completely unacceptable.

I believe that the creation of a task force, which includes people who have experience in Indian country—such as a legal scholar with indigenous people—could help address these issues going forward so these types of issues do not happen with tribes in Nevada. Criminal justice issues can also be addressed in a good way, and best practices can be developed when states have a good understanding of Indian country and tribes in the state can work together. This would allow for more consistent application of law enforcement in Indian country. I believe this is best accomplished by creating bridges between policy experts, including those in Indian country and regarding Indian country, and the policy makers.

Jim Hoffman, representing Nevada Attorneys for Criminal Justice:
Nevada Attorneys for Criminal Justice (NACJ) supports this bill because Nevada has an ongoing problem with race and policing. This is an example based on real statistics from an American Civil Liberties Union study. In 2010, Black Nevadans were four times as likely to be arrested for marijuana possession as white people, despite the fact that Black and white people use marijuana at the same rates. After marijuana was legalized, those numbers improved, but not by much.

Today, Black people are three times as likely to be arrested for marijuana possession as white people. In some counties, this is much higher. For instance, the most recent numbers from Douglas County showed that Black people are 22 times more likely to be arrested for marijuana possession than white people. This is just a snapshot of one offense only involving Black and white people. We know anecdotally that this problem exists in many different areas of policing and also harms indigenous people, Latinos, and people of other races. We know that this is persistent. From 2010 to 2018, the numbers only went from four times as many to three times as many. This is a problem that our state's existing policies and our existing framework at the ACAJ have not really been able to address. The task force and the other provisions of A.B. 243 will help us understand why this disparity is happening and address it so that justice is truly fair and equal for everyone. For this reason, NACJ supports this bill.

Tonja Brown, Private Citizen, Carson City, Nevada:
We are in strong support of this bill. Under section 7, we would like to see the word "retroactively" be applied retroactively. Nowadays, we know a lot about mental health issues. Twenty, thirty, forty, fifty years ago, we did not. We have individuals still serving time in our prisons who have been misdiagnosed for many years and have been in for decades. How does that compare to what the current situation would be if this bill passes and moves forward without making it retroactive?

I am not sure if you are familiar with the case, and I think it should be part of the task force looking into cases and trying to figure out some things, not just dealing with law enforcement. I want to refer you to the David Webb case from Carson City some years ago. A Black man, David Webb, was arrested by the police. The police had a suspect. He was described as being Black. They came across Mr. David Webb. He was apprehended, put in jail, and shortly thereafter the police realized that they had the wrong guy in jail. So they went to the district attorney here in Carson City—at the time it was Chief Deputy District Attorney Anne Langer. She informed the officers he would not be released unless he signed a waiver not to sue the city for his false arrest. Mr. Webb flat out refused, and ultimately he did sue, and they did settle. The police did get the actual suspect. This chief deputy district attorney is now the Storey County district attorney. I think we should be looking at civil lawsuits when things like this happen and then do a comparison with, for example, that district attorney and how she proceeds to charge certain individuals.

In section 4, subsection 2, paragraph (h), it says, "An individual impacted by police violence." It does not say it has to be in Nevada. If that is the case, I would strongly

recommend that Ms. Annemarie Grant apply for that position. I think she would be wonderful. I think they should do a comparison and make it retroactive because maybe it will help those individuals—who have been in for 40 years, who were 18 or 19 years old—have an opportunity to get out.

Chairman Yeager:
Is there anyone else who would like to testify in support of A.B. 243? [There was no one.] Is there anyone who would like to testify in opposition to A.B. 243?

Jennifer P. Noble, Chief Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
I am testifying in opposition to A.B. 243. I would like to begin by thanking Assemblyman Orentlicher and Ms. Bacon for meeting with us to discuss the bill and hear our concerns. I want to let this Committee know some of the considerations that we undertook prior to taking this position on this bill. As I said, we met with Assemblyman Orentlicher and Ms. Bacon, and we also talked with faculty from Stanford University about the concept of a race-blind charging system. When the concept of the bill was first brought to us, it was with the idea that Stanford had a free software program that could facilitate so-called blind-charging by making redaction automated, but it quickly became apparent that the software requirements and specifications are not something that any Nevada district attorney's office can use.

Importantly, Stanford's study using implicit bias algorithms failed to demonstrate any statistically different racial outcomes after implementation of blind-charging. When we asked about that, the explanation was essentially that San Francisco prosecutors are more enlightened or more sensitive to the issue of implicit bias than Nevada prosecutors. There is no support for this hypothesis. This lack of evidence is important, especially when the Committee is considering a bill that will put onerous requirements on prosecutors' offices. We take our oath as prosecutors very seriously, and are ever mindful that it is our duty to protect the safety of our community, including every member of our community regardless of race, creed, ethnicity, or religion. We are all Nevadans, and we take the issue of implicit bias very seriously.

This bill does not simply require the district attorneys and city attorneys to engage in race blind-charging. It is requiring us to engage in evidence-blind charging. I say that because prosecutors are not allowed in making their initial charging decisions to consider critical information, such as the criminal history of the arrested person, witness statements, body-worn camera footage, and surveillance footage. We cannot even know what the person was booked on. Reasoned case evaluation and prosecutorial discretion just cannot occur in this informational vacuum. We will have to make a full case evaluation a second time with the previously redacted information included, record any changes in our charging decision, and offer an explanation for those changes. This would happen in each case. Support staff will spend many hours each day combing through reports and pretrial assessments to redact all the required demographic information. We do not have the time or personnel to do this. We did some test runs on how long it would take an experienced secretary supervisor to

redact the information contemplated by the bill. This is in line with some of the questions that were asked, so I will give a couple of examples.

The first case of a felony attempted robbery took her 11 minutes to redact the information. This is part of the additional requirements imposed by the amendment today. Another felony robbery took 25 minutes, a murder 30 minutes, and a misdemeanor domestic battery took 30 minutes. These time redactions were prior to the additional requirements in the amendment, which also require redaction of the officer's name, arresting charges, et cetera. In just Washoe County, these redactions would have to be done on an average of 9,584 cases per year. It is my understanding that in Clark County the redaction process would be applied to about 35,000 cases per year. Please keep in mind that when the defense discussed the issue of redaction, they are typically redacting information like social security numbers, et cetera. They are not redacting all the additional information required by this bill.

In Washoe County, we will have to create a screening division and get rid of our lateral prosecution model. We think this model protects our community better because the same prosecutors are assigned to offenders each time they offend, which better informs the prosecutor in their charging decisions and plea negotiations with that defendant. With this bill, the district attorneys who charge cases also cannot cover *Valdez-Jimenez* hearings and detention hearings, because they will see the defendant in person and learn the arresting officer's identity, booking charges, the defendant's criminal history, et cetera, prior to charging. This means our deputy district attorneys are not fungible and we are going to need more of them.

This bill is well-meaning. It is an academic exercise, but it is utterly unworkable in Nevada district attorneys' offices. Justice delayed is justice denied, and the deleterious effect on our ability to do our job and meet constitutional and statutory deadlines will be severely hobbled. This is not a money committee, so I will refrain from discussing the fiscal implications of these onerous requirements.

I would like to again reiterate that we take the issue of implicit bias very seriously, but we do not have the privilege of operating in the world of academia, of studies and hypotheses. We operate in the world of devastated victims, shattered lives, near-impossible caseloads, and constitutional and statutory deadlines that are non-negotiable. Assembly Bill 243 fails to consider or provide prosecutors with any tools that would make the requirements workable in the real world.

Jessica Walsh, representing Clark County District Attorney's Office:
I am speaking on behalf of the Clark County District Attorney's Office in opposition to A.B. 243. I am in charge of our case assessment unit and oversee those making charging decisions with our office. I want to thank Assemblyman Orentlicher for meeting with representatives of our office to discuss this bill. I also want to let the Committee know that we met with Alex Chohlas-Wood, the Executive Director of the Stanford Computational Policy Lab, who developed the blind-charging program. Additionally, we read his study on his implicit-bias algorithm. It is important to note that neither his published study nor any of

his follow-up research has shown any statistically different racial outcomes after the implementation of blind-charging. This is important to note when we are talking about a bill that places onerous requirements on prosecutors. My screening deputies make thoughtful, fact-based charging decisions after viewing photos and videos, reading victim statements, talking to officers, and yes, reading the declaration of arrest.

Additionally, some of the information to be redacted in a conceptual amendment are often elements of the crime itself. It could be entirely inappropriate and unethical in some cases to make even an initial charging decision without being provided that information. Our submissions process is not compatible with the program that would automatically redact the information as it does not work with a pdf, leaving us to make the required redactions manually. Considering all that we reviewed, there is no way the Clark County District Attorney's Office could undertake the requirements of A.B. 243 without a significant investment in new staff. We do not feel this is a good policy considering there is no evidence that we are engaged in biased charging decisions. The same deputies who screen the cases are also the deputies who currently appear in the initial appearance court in the Las Vegas Justice Court. Our office has taken great effort to expedite our charging decisions to coincide with initial appearance court, resulting in approximately 20 percent of offenders being released within one day of their arrest. This would no longer be possible given the requirements of A.B. 243. Our office takes questions of implicit bias in racial disparities in the criminal justice system very seriously. A few years ago, we began training on the issue of implicit bias and even brought in a UNLV professor as an instructor.

Finally, I want to invite any of you who want to tour our screening division, to sit with a deputy, to see what we do and how we do it. John Jones and I are more than happy to facilitate that for you.

Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson:
The City of Henderson would like to thank the bill sponsor and appreciates his time he provided our city staff. I do concur with the comments of Ms. Noble and Ms. Walsh. I would add that under Nevada's constitutional separation of powers clause, the powers of our state government are divided into three coequal departments. The executive branch encompasses the responsibility to carry out and enforce laws. While there may be overlap between the branches to some degree, one branch may not directly interfere with the essential functions of another. Since the decision to prosecute or not has been called a special province, or core function of the executive branch, so long as the prosecutor has probable cause to believe the defendant committed an offense, the decision whether or not to prosecute and what charge to file generally rests entirely with the prosecutor.

Well-meaning as it may be, this bill represents a direct interference with those core duties of the executive branch as it would regulate how a prosecutor could initially read information and then it would dictate what mental impressions the prosecutor must write down in every file. A law should not interfere with its deliberative process and dictate how a prosecutor notates his or her mental impressions in a case, which would constitute a work product and would not be discoverable anyway. To justify to directly intervene with the screening

process, the bill promotes blindness as a means to counteract discriminatory decision making. But just saying something does not make it so. Where is the proof of discrimination in the screening process in Nevada?

While discrimination in our country is certainly real, there is no showing there is any discrimination in the case assessment process in any prosecutorial office in the state, and no court has ever found such. A prosecutor's discretion is always subject to constitutional constraints, and there are always legal remedies of discretions abused through the court system, the state bar, or through an employer. Simply, prosecutors judge cases on their facts, and prosecutors need as many of those facts right away in the assessment process. Mandating several extra steps to an internal process will just slow everything down. We have an obligation to review the entire report, and we do not want to guess when making these decisions. Holding back information such as a location of the crime or the crime itself would not promote a fair or legal process. You need to review the unredacted report to make sure you even have jurisdiction to file the charge and know what charge you are filing. We want to do the right thing. Blind justice is symbolical, but it would not be served by this bill.

Troyce Krumme, Vice Chairman, Las Vegas Police Managers and Supervisors Association:

We are currently in opposition to A.B. 243 as written based on the task force. We are not against a task force itself or against effective police reform, but we need to ensure that any task force which is advising on reform is designed in such a way as to identify proven best practices and not changes based on narrative. Questions must be asked and answered regarding the motivations for why any and all of the expertises that were selected were chosen to make up that board.

It also appears that not enough input from Nevada law enforcement was heard prior to the drafting of this bill. Affected stakeholders should be brought in for additional input. We encourage those working on the bill to contact affected stakeholders from law enforcement, criminal defense, prosecution, and members of the community for future input before any implementation of this bill.

Ed Poleski, Assistant City Attorney, Criminal Division, Las Vegas City Attorney's Office:

I am testifying today in opposition of A.B. 243 as written, specifically section 8 of the bill. I have been a prosecutor for almost 30 years and a prosecutor for the city for almost 24 years. I could say unequivocally that race and ethnicity have no place in making charging decisions in criminal cases, and I can assure you that our office does not consider these factors in making our charging decisions. Our office processes and screens about 5,000 violent cases a year, including battery domestic violence cases; about 2,500 driving under the influence cases; and thousands of other misdemeanor offenses in the city. When we screen a case, we are only looking for the elements of the alleged offense and whether they have been met. We currently have difficulty keeping up with our screening because of our large caseload and meeting upcoming court dates. This bill and the proposed amendment will make that task

even more difficult. As was indicated earlier, we get all our reports on paper. They will have to be scanned and then redacted. Every single case that we get will have to be manually redacted by our staff. Every case will have to be screened twice, which will slow down the screening process and ultimately the court case. This will require additional staff and more attorneys.

In fiscal year 2020, our office filed over 22,000 misdemeanor cases. That does not include the additional cases that we denied. All these cases will have to be screened twice. The amendment to the bill requires that the location of the event be redacted, and we will not even know that we have jurisdiction in the matter and will have to guess as to the proposed charges that the officer is presenting. As I indicated at the beginning, race, ethnicity, and physical descriptors should play no role in determining the filing of criminal charges in a criminal case. We look forward to working with the sponsors and coming up with workable amendments to the bill or other solutions to achieve its goal that will work with the prosecutorial agencies around the state.

Calli Wilsey, Senior Management Analyst, Intergovernmental Relations, City of Reno:
We are here in opposition today as we have a limited concern about how the charging system may inadvertently increase and duplicate clerical work for our police department. We met with Assemblyman Orentlicher and appreciate his willingness to consider an amendment to address this concern, and we will be getting that over to him. We appreciate the opportunity to work with him and to testify today.

Eric Spratley, Executive Director, Nevada Sheriffs' & Chiefs' Association:
You have heard the logical explanations and propositions thus far. We agree with those and how chaotic it would be to implement the provisions of this bill and the bias and unbalanced nature of a task force proposed. Law enforcement leaders are supportive of the good public policy being proposed this session, such as the oversight provided by Assembly Bill 58, and are also supportive of transparency from law enforcement agencies. This bill is not the mechanism as drafted or with the proposed amendment, so we are in opposition.

A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
The Las Vegas Metropolitan Police Department is opposed to A.B. 243 in its introduced form or with the amendment, unfortunately. Specifically, section 4 is our issue. Las Vegas Metropolitan Police Department (LVMPD) is in full support of continued efforts by the community we serve to provide quality, constructive feedback as to how to best serve our community members. It is the goal of LVMPD to be the safest community in America. This goal can only be obtained through partnerships with our community members. However, LVMPD does not support the creation of the task force described in section 4. The LVMPD echoes many of the concerns of Assemblywoman Nguyen. It is the position of LVMPD that the task force appears to create a conflict between the already well-functioning, well-led, and well-community representative Advisory Commission on the Administration of Justice and its subcommittees.

Furthermore, it would be the position of LVMPD that if the task force is to be formed, that for purposes of equity for Nevada, there would be memberships provided for representatives from the state Attorney General's Office, Clark County District Attorney's Office, Washoe County District Attorney's Office, Nevada District Attorney's Association, Nevada Sheriffs' and Chiefs' Association, and a victim advocate. As we all know, Nevada is a very unique state. We have a very condensed and large population in southern Nevada and yet some of the most remote and smallest communities in the country and everything in between, it seems. Because of this, great consideration has to be taken to all legislation to ensure that the needs of the state as a whole can be met.

Chairman Yeager:
Is there anyone else in opposition? [There was no one.] Is there anyone who would like to testify in neutral on A.B. 243? [There was no one.] Assemblyman Orentlicher, would you like to provide concluding remarks?

Assemblyman Orentlicher:
I would like to see if Ms. Bertschy or Ms. Hopkins would like to say anything before I conclude.

Kendra Bertschy:
As we heard, this is extremely good policy to ensure we are charging in a way that is racially neutral. We heard that there are no studies indicating that there is an issue in Nevada; however, as Assemblywoman Cohen mentioned in her remarks, we know from other studies done from the Crime and Justice Institute that there is an issue, and we believe this is one of the ways to address this issue. It is unfortunate that our software systems right now are not compatible to use the free Stanford program; however, there are ways to ensure that justice is met in a timely fashion and that justice is met for every individual in this state. We appreciate your support.

Assemblyman Orentlicher:
Thank you for the hearing today. We are interested in working with everyone to make sure we get this right. There are refinements we can make, and we want to get the details right. We also want to make sure we do not lose sight of the forest and that we are basing on data and not misunderstandings. There is a problem. We do not doubt the good faith and efforts of our law enforcement officials in Nevada, but we have ample data indicating that race infects law enforcement decisions in very unfair ways and we need to address it. We know that Blacks and other minorities are sentenced more harshly. That is clear. We know that unfair charging decisions are a key factor in that.

As Mr. Schifalacqua pointed out, there are remedies where we can try to hold people accountable, but it is far more important to prevent harm. As Assemblywoman Summers-Armstrong pointed out, there are real people's lives that are devastated because of unfair charging decisions. The requirements of this bill are not onerous. We have done our tests, and it does not take a lot of time. We are happy to work with the district attorneys' offices to make sure they can implement this in a simple, nonburdensome way because we

are confident it can be. It is critical that we have a fair justice system where people are not treated differently because of their race or ethnic origin. We will work to make sure that happens. On the task force, we will work to make sure we have the right membership. It is a critical resource that we can draw on for our activities going forward. Thank you for your time today. I look forward to working with everyone to make sure this is the best bill possible.

Chairman Yeager:
I will close the hearing on A.B. 243. Is there anyone who would like to give public comment?

Quentin Savwoir, Deputy Director, Make It Work Nevada, Nevada Housing Justice Alliance:
Nevada has one of the fastest eviction processes in the country, and this process is disproportionately impacting Black and Brown families. In 12 days, nearly a quarter-million Nevadans will be at risk of eviction. We need a work session on Assembly Bill 141 and a hearing for Assembly Bill 161. Moving these bills forward will ensure we are able to protect Nevadan families, keep them in their homes, and secure their right to due process.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
My brother was killed by Reno police. Today I would like to talk about Erik Scott. He was killed on July 10, 2010, while leaving a Costco in Las Vegas by Las Vegas Metropolitan Police Department Officer William Mosher, who fired two rounds. Officer Joshua Stark and Thomas Mendiola also fired. Erik was hit a total of seven times. A Costco loss prevention supervisor claims Erik had a gun in his waistband and Costco prohibits weapons. The loss prevention staff also said that Erik did not threaten anyone inside the store, did not act violently, and did not remove the gun from his waistband. A handgun was later found still in its holster on the ground. Officer Mosher testified that he did not recall ordering Erik to drop the gun. Erik was outside the store and would have been within his constitutional rights according to your state's Second Amendment law to possess that gun. A 911 recording did record that Officer Mosher commanded Erik to drop the weapon. In truth, Erik was leisurely walking out of Costco that day. He was not posing a threat to anyone. He did not make any erratic movements. In fact, Officer Mosher instructed Erik to drop the gun. Erik was surrounded by three officers. He turned around. He was compliant. He was told to drop the gun and he did exactly that. He was executed for it. Erik was the second community member killed by Officer Mosher.

I would like to tell you a little bit about Erik Scott as a human being. He was a veteran who attended the U.S. Military Academy at West Point. He graduated in the top 10 percent of his class and was commissioned a U.S. Army officer in May 1994. He subsequently served as an M1A1 tank platoon leader with the 1st Cavalry. He left active duty during the post-Cold War military drawdown and embarked on a successful career in medical and real estate sales. He was transferred to Las Vegas in 1999, working in cardiovascular sales for Boston Scientific. While working full-time, he obtained a master's in business administration from Duke University's Fuqua School of Business, then branched into real estate. Erik was

involved in a number of major projects in Las Vegas. He is loved and missed by his parents, William and Linda Scott, and his brother, Kevin Scott, and so many others. Please support bills that promote transparency and accountability from law enforcement.

Chairman Yeager:
Is there any other public comment? [There was none.] We have one more item of business, which is a committee bill draft request (BDR) introduction. As this is our first one of the session, let me go over that process very quickly. There are certain bill draft requests that have to be introduced through the Assembly Judiciary Committee, so what we will be voting on today is to introduce that bill and that means it will go to the floor, get an actual bill number, and then it will come back to the Committee for potential action, whether it means a hearing or not a hearing, before it moves on through the process. An affirmative vote today just allows the measure to be drafted. It does not indicate you are going to support the measure if and when we actually hear it.

I have BDR 16-511 and am seeking a motion to introduce it.

BDR 16-511—Makes various changes relating to offenders. (Later introduced as Assembly Bill 342.)

ASSEMBLYMAN WHEELER MOVED TO INTRODUCE BILL DRAFT REQUEST 16-511.

ASSEMBLYWOMAN NGUYEN SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED. (ASSEMBLYWOMAN KASAMA WAS ABSENT FOR THE VOTE.)

Is there anything else, Committee members? [There was nothing.] We do not have agendas out for the rest of the week, but I do anticipate that we will have Committee meetings every

day. Before we adjourn, I would like to say happy birthday to former Assembly Judiciary Chair and current Speaker Frierson. This meeting is adjourned [at 10:57 a.m.].

RESPECTFULLY SUBMITTED:

Traci Dory
Recording Secretary

Linda Whimple
Transcribing 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 A.B. 237, submitted by Assemblywoman Sandra Jauregui, Assembly District No. 41.

Exhibit D is a memorandum to A.B. 237 to the Assembly Judiciary Committee, dated March 19, 2021, authored and presented by Michael Buckley, Chair, Executive Committee, Real Property Section, State Bar of Nevada.

Exhibit E is a copy of a PowerPoint presentation titled "A.B. 243: Criminal Justice Reform," submitted and presented by Assemblyman David Orentlicher, Assembly District No. 20.

Exhibit F is a proposed amendment to A.B. 243 presented by Assemblyman David Orentlicher, Assembly District No. 20.

Exhibit G is testimony in support of A.B. 243, presented by Assemblyman David Orentlicher, Assembly District No. 20 and submitted by Julianna Melendez, Nevada Youth Legislator.