MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON CORRECTIONS, PAROLE, AND PROBATION

Seventy-Ninth Session
March 14, 2017

The Committee on Corrections, Parole, and Probation was called to order by Chairman James Ohrenschall at 8:05 a.m. on Tuesday, March 14, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Steve Yeager, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman John Hambrick, Assembly District No. 2
Assemblyman William McCurdy II, Assembly District No. 6

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth, Washington, D.C.
Kristina Wildeveld, Attorney, Nevada Attorneys for Criminal Justice
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
John J. Piro, Deputy Public Defender, Clark County Public Defender's Office
Tonja Brown, Private Citizen, Carson City, Nevada
Glen A. Meek, Private Citizen, Las Vegas, Nevada
Will Adler, Private Citizen, Carson City, Nevada
Steve Jimenez, Extern, Nevada Hispanic Legislative Caucus
Scot Rutledge, representing the Nevada Cannabis Coalition
John T. Jones, Jr., representing Nevada District Attorneys Association
Bart Pace, Chief Deputy District Attorney, Clark County District Attorney's Office
David Cherry, Communications and Intergovernmental Relations Manager, City of Henderson
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Andres Moses, Staff Attorney, Eighth Judicial District Court
Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts

Chairman Ohrenschall:
[Roll was taken. Committee protocol and rules were explained.] I am going to start with the work session. I will turn it over to our committee policy analyst, Diane Thornton.

Assembly Bill 23: Authorizes the Division of Parole and Probation of the Department of Public Safety to establish and operate independent reporting facilities. (BDR 16-170)

Diane C. Thornton, Committee Policy Analyst:
We have two bills on work session today. The first one is Assembly Bill 23, which authorizes the Division of Parole and Probation of the Department of Public Safety to establish and operate independent reporting facilities (Exhibit C). It was heard in Committee on February 23, 2017. The bill authorizes the Division of Parole and Probation of the Department of Public Safety to establish, adopt regulations for, and operate one or more independent reporting facilities for the purpose of providing certain daily services to any parolee or probationer who is ordered to attend such an independent reporting facility

as an intermediate sanction. The chief of the Division of Parole and Probation is authorized to contract for any services necessary to operate the independent reporting facilities. There are no proposed amendments.

Chairman Ohrenschall:
There was quite a bit of testimony on this bill that it could help people under supervision get schooling and education to help them succeed. Is there any discussion on the bill?

Assemblyman Thompson:
I have many concerns about this bill. There are a lot of community connections already in place. I will vote the bill out of Committee, but I reserve the right to change my vote. I will let you know if I plan to change my vote.

Chairman Ohrenschall:
I understand your concerns and I respect them. I hope that, if this bill does pass into law, the reporting centers will reach out to community groups already in place helping offenders succeed. Is there a motion to do pass Assembly Bill 23?

> ASSEMBLYMAN PICKARD MADE A MOTION TO DO PASS ASSEMBLY BILL 23.
>
> ASSEMBLYWOMAN TOLLES SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblyman Pickard.

Assembly Bill 26: Revises provisions governing the dissemination of certain records of criminal history to certain persons by the Central Repository for Nevada Records of Criminal History. (BDR 14-138)

Diane C. Thornton, Committee Policy Analyst:
Assembly Bill 26 revises provisions governing the dissemination of certain records of criminal history to certain persons by the Central Repository for Nevada Records of Criminal History (Exhibit D). It was heard in Committee on February 14, 2017. This bill authorizes an employment screening service which is not authorized to enter into an agreement with another authorized employment screening service to use the service to inquire about, obtain, and provide those records to the employment screening service for dissemination to the employer or volunteer organization. This bill also removes the limitation that only allowed employers in this state to use the services so that out-of-state employers also have access.

There was one amendment by Julie Butler, Administrator, General Services Division, Department of Public Safety. She proposed an amendment to address the concerns that the Committee expressed during the hearing. The amendment strikes language in the bill to remove the ability of an employment screening service to conduct criminal history record searches on behalf of another employment screening service.

Chairman Ohrenschall:
I want to thank Ms. Butler for submitting that amendment because it addresses the concerns that Committee members had during the hearing about the unauthorized participants and security of this information. Is there any discussion?

Assemblyman Anderson:
The amendment addresses my main concerns. I have consulted with Ms. Butler, and I want to go on the record to tell her thank you for amending the bill to take care of my concerns. I will be voting yes.

Assemblyman Wheeler:
I will vote yes in Committee, but I am still looking into the fees. I do not see any problems with the bill. If I change my mind, I will let the Chairman know.

Chairman Ohrenschall:
Is there any other discussion? [There was none.] I will accept a motion.

> ASSEMBLYMAN YEAGER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 26.
>
> ASSEMBLYMAN PICKARD SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

The floor statement will go to Assemblywoman Krasner. That concludes the work session. We will now open the hearing on Assembly Bill 251.

Assembly Bill 251: Authorizes the State Board of Pardons Commissioners to commute certain sentences of juvenile offenders. (BDR 16-304)

Assemblyman John Hambrick, Assembly District No. 2:
I am here this morning to present Assembly Bill 251 for your consideration. The purpose of the bill is to bring current law into conformity with recent judicial opinions. The bill allows the State Board of Pardons Commissioners to commute the sentence of any person convicted of any crime that the person committed when he or she was less than 18 years of age.

On the phone I have Mr. James Dold, who is the Advocacy Director for the Campaign for the Fair Sentencing of Youth from Washington, D.C. I would like to turn the presentation over to Mr. Dold to walk the Committee through the bill and to answer any questions.

James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth, Washington, D.C.:
I want to thank Assemblyman Hambrick for his leadership in introducing Assembly Bill 251 and for all of the work that he has done over the years on behalf of honorable children and children who have made mistakes in their lives and need a second chance.

As Assemblyman Hambrick stated, A.B. 251 is really about trying to come up with a solution to the remaining constitutional issue that is still plaguing Nevada as a result of a recent U.S. Supreme Court decision that came down in 2016. Committee members may be aware that, during the 2015 Legislative Session, the Nevada Legislature unanimously passed Assembly Bill 267 of the 78th Session, which eliminated life-without-parole sentences going forward for child offenders. It also made individuals retroactively eligible for parole after they had served either 15 years for nonhomicide offences or 20 years for the instance where a victim was killed during the commission of a homicide offense. Assembly Bill 267 of the 78th Session had one limitation: it did not apply retroactively to individuals who had more than one victim in their case. There were about 20 individuals who were directly impacted by the bill, but there were 4 individuals who had two victims in their cases. In the intervening year of 2016, the U.S. Supreme Court came down with another decision following up on its 2012 decision in *Miller v. Alabama* [132 S. Ct. 2455 (2012)], which many people have read as originally limiting mandatory life-without-parole sentences for child homicide offenders. The U.S. Supreme Court, however, expanded on that decision in *Montgomery v. Louisiana* [136 S. Ct. 718 (2016)]. Not only did it hold that the 2012 *Miller* decision was meant to be applied retroactively, but it further clarified that the Court was putting life-without-parole sentences for child offenders in the same category as it had put the death penalty.

In 2005, the U.S. Supreme Court had struck down the death penalty for children. In 2016, the Court ruled that, even when individual judges considered the mitigating factors of youth and looked at youth differently, a sentence of life without parole still violated the *U.S. Constitution's* prohibition on cruel and unusual punishment for a child whose crime reflects unfortunate, yet transient, immaturity. In other words, the Court said that the only way a child can receive a life-without-parole sentence is if the state is able to show that the child is permanently incorrigible and is beyond rehabilitation. A number of states, in responding to the *Montgomery* decision, have simply been commuting everyone's sentences to life with the possibility of parole, similar to what A.B. 267 of the 78th Session did for the vast majority of juvenile homicide offenders.

Assembly Bill 251 will create another avenue by which the state may come into compliance with the *Montgomery* decision by allowing the State Board of Pardons Commissioners to essentially commute all of the four existing sentences. It is a straightforward and simple bill. Section 1 specifically states in subsection 2, "If a person is convicted of any crime that the person committed when he or she was less than 18 years of age, the Board may, in its discretion, commute: (a) A sentence of death; or (b) A sentence of imprisonment in the state prison for life without the possibility of parole, to a sentence that would allow parole." Section 2 allows that these provisions would be applied retroactively, so it would "apply to

offenses committed before, on or after October 1, 2017." Our hope is that the Nevada Legislature enact Assembly Bill 251, and that the Pardons Board, as a compliance mechanism, simply commute all of those remaining sentences to be in line with A.B. 267 of the 78th Session.

Going forward, A.B. 267 of the 78th Session specifies that a life-without-parole sentence cannot be imposed upon a child offender. It was in the negotiation process that we put in the clause that specifically says that it will not apply to individuals with more than one victim in their case. Since the *Montgomery* decision came down, it is clear from the Supreme Court's standpoint that any sentence of life without parole is inherently unconstitutional unless it can be shown that those individuals are beyond rehabilitation. The Court, in *Montgomery*, specifically gave legislators an out by saying the easiest and simplest way to comply with this decision without going through a resentencing hearing would be to keep the life sentence intact but make those individuals eligible for parole. They actually cited a statute from Wyoming that had been enacted previously, and I think that decision might have been cited to A.B. 267 of the 78th Session in Nevada as well.

That is what the bill does. It is our hope that it will be enacted, and that the State Board of Pardons Commissioners will then act upon those four remaining cases and commute those sentences to parole-eligible sentences. Nevada will then be in full compliance with the recent Supreme Court decisions.

Assemblyman Thompson:
What connection, if any, does the offender have with the victim's family prior to being released? Is there any connection at all? Is the victim's family notified that this person is being released? There was an incident recently where a person was retroactively released into a community, which was a concern for the community.

James Dold:
It is hard for me to speak directly to that. I am familiar with a number of defendants who, through processes like restorative justice—where there is usually a dialogue that has been created by third parties—that allow victims and offenders to have a dialogue to promote justice. In terms of whether an offender who gets released can reach out to the family, I am not familiar with any laws that it cannot be done. I know there have been offenders and victims who have talked in the past. As a matter of fact, Mario Taylor—who spoke before the Committee in 2015—specifically talked about that as part of his case. The victim's family had forgiven him and they were in constant contact. I know that it does happen, but I am not sure what the law may prohibit in this area.

Assemblyman Thompson:
It gives a family closure and keeps them from being surprised.

Chairman Ohrenschall:
Having attended some Pardons Board meetings, it is my understanding that the victims and their families are normally notified of hearings. This gives them an opportunity for the

Pardons Board—which is currently made up of the Governor, the Attorney General, and the Nevada Supreme Court Justices—to hear both the offender's argument and the victim's argument.

Assemblyman Yeager:
To be clear for the record, you said in your statement that if this bill were to pass, it allows an offender to petition the Pardons Board for a decision. It is discretionary whether the Pardons Board would hear the case, and then discretionary whether parole would be granted. This bill does not give any automatic ability to be released. Can you confirm that is the intent of the bill?

James Dold:
That is absolutely 100 percent right. This bill does not allow anyone to be directly released. They still have to prove to the Pardons Board that their sentence should be commuted and then, in the event that the Pardons Board agrees, they can make the sentence a parole-eligible sentence. It is not a direct-compliance measure in the sense that there will be individuals who are still serving life without parole. The only way the state will be able to come into compliance with the *Montgomery* decision is by scheduling resentencing hearings, or the Pardons Board takes up all four of these cases and retroactively commutes those sentences to parole-eligible sentences. It will not mandate that the Pardons Board do anything. They will still have complete discretion in those cases.

Assemblywoman Miller:
We are looking at anyone under the age of 18 when they committed the crime. I know we are identifying first-degree murder, but I also recognize that there is a major difference between a 17-year-old and an 11- or 12-year old. Were there any parameters when you were thinking of the age of the offender, or was it just planned to be anyone under the age of 18? It could be argued that a 17-year-old knows exactly what they should know at 18 as well, as opposed to an 11- or 12-year-old committing the same crime.

James Dold:
The bill does contemplate people who are under the age of 18. This builds off of what A.B. 267 of the 78th Session did in 2015 where that specifically applied to offenders under the age of 18. There are a couple of components. One is that it is meant to somewhat mirror the U.S. Supreme Court cases. When the Court has taken these issues up, they have drawn a bright line for defendants under the age of 18. In large part, that is due to the juvenile brain and behavioral development science. The other component is where society has oftentimes drawn the line in terms of recognizing the ability of children to make adult-related decisions. In society now, we do not let children under 18 vote, serve in the military, enter into contracts, or get married. They cannot gamble in casinos, get a sheriff's card, serve cocktails, or be a bartender until they are 21. There has been a recognition that, at the age of 18, individuals have matured to the point where they are capable of making adult-related decisions. That is where the courts have drawn the line, so that is essentially where we try to come from and to make sure that it would allow the state to be in compliance

with those decisions since that is where the Supreme Court has drawn the line. That is also where juvenile brain and behavioral development science largely suggest is when individuals are more capable of making adult-related decisions.

Assemblywoman Miller:
For the record, there are people who have gotten married, joined the military, and things like that before the age of 18 years old. My concern is that you are saying, when it comes to premeditated, first-degree murder, a 14- or 15-year-old does not know better. That is a concern. Are you saying that a 14- or 15-year-old does not have the capacity to know that first-degree murder is wrong?

James Dold:
It is not so much that a 13- or 14-year-old might not intuitively know that murder is wrong; it is about their ability to think through the long-term consequences. One of the things that the Supreme Court cited in all of these decisions was that the brain—and behavioral development science that was coming of age at that time—showed that the prefrontal cortex was not fully developed in youthful offenders the same way that it was in adults. Children actually rely more heavily on their amygdala when they are processing information and making decisions. It is one of the reasons the Supreme Court cited it and why children are more impetuous, more prone to risk taking, more susceptible to peer pressure, and less likely to think about the long-term consequences of their decisions. The Supreme Court also cited that it is one of the reasons why children have this enhanced capacity to be changed and rehabilitated over time. The Supreme Court says that many of us, as we grow up, are not the same people we were at 15 or 16 years of age. That is partly because the brain development has not fully occurred by then.

For the Supreme Court, the penological justifications that underlie the reasons that we impose the harshest possible punishments—like retribution and deterrents—begin to fall away in light of the juvenile brain and behavioral development science, because the focus should be on rehabilitating child offenders. That is where the Supreme Court has rested the bulk of its reasoning in these cases. It is not so much that kids who are committing these crimes may not intuitively know they are wrong, it is that their brains have not fully developed to the point where they have a full understanding and appreciation in the same way an adult would. There is a difference in the level of culpability between a 15- or 16-year-old who commits a crime and a 30- or 35-year-old who commits a crime. That is what we are getting at here: the ability of that child offender to grow, change, and be rehabilitated over time. It is trying to create a system where we are treating those child offenders differently than we would an adult for those very same reasons.

Assembly Bill 251 does not guarantee the release of anyone. It just kicks these decisions over to the Board of Pardons Commissioners to make those decisions and to review all of these cases on an ongoing basis. It is the same thing with A.B. 267 of the 78th Session. It does not guarantee the release of anyone; it just says the Pardons Board has an opportunity to review these cases because they are so different from adult offenders.

Assemblyman Wheeler:
During the penalty phase of the trial, all of these mitigating factors are taken into consideration—like the age of the child, how much his brain has developed, and his background—are they not? If so, why are we taking the decision out of the hands of the jury that pronounced this stiff sentence and moving it to the Pardons Board?

James Dold:
Up until 2015 when the Legislature enacted A.B. 267 of the 78th Session, there were no specifications in law that required judges to consider how juveniles are different from adults. That bill did amend those provisions. Now, anytime a child is sentenced in adult court, those factors are required to be considered by a judge. This was part one of the genesis for the court cases that came down. Oftentimes these factors were not taken into consideration or were not being afforded the great weight that the Supreme Court believed they should be afforded since kids were getting these extreme sentences like death and life without parole. Now these are things that have to be considered every time a child is sentenced in adult court in the state of Nevada.

The Legislature has made sure that life without parole cannot be imposed upon a child offender. That was the policy decision in 2015. This goes back to a couple of those previous cases that were excluded from A.B. 267 of the 78th Session to make sure the state would be in compliance with the U.S. Supreme Court cases. A number of states have followed a similar trajectory in allowing all of those individuals to be eligible for parole. I mentioned Wyoming before, and Texas is another state. There are a number of states that have enacted all of these types of policies. There are 17 states and the District of Columbia that have similar policies on the books that prohibit life without parole and have allowed all of those offenders to be retroactively considered for parole.

Assemblyman Anderson:
I am confused. The way I read this bill was that it was to comply with two different Supreme Court decisions: the first was from the Nevada court to get rid of the ex-post-facto issue, and the second was on the life-without-parole issue for minors. Is there anything in this bill that is not required pursuant to Supreme Court decisions?

James Dold:
No, there is not. This specifies that the Pardons Board can commute the sentence of anyone under the age of 18 who was sentenced to death or was given life imprisonment without the possibility of parole to a sentence that would allow parole. The *Roper v. Simmons* [543 U.S. 551 (2005)] case in 2005 prohibited the use of the death penalty on juvenile offenders, so that is off the table completely. There was a statute that was enacted previously that specified that the death penalty could not be imposed upon children.

The second thing was life without parole, which was done away with in the *Graham v. Florida* [130 S. Ct. 2011 (2010)] decision that struck down life without parole for non-homicide-related offenses. In the last four years, we have had the decisions that I previously discussed, and those decisions were specifically about life-without-parole

sentences for juvenile homicide offenders. The *Montgomery v. Louisiana* decision clarified what the *Miller* decision meant, and specified that life without parole is inherently unconstitutional unless the state can show that a defendant is permanently incorrigible or beyond rehabilitation. There are a number of states that had discretionary life without parole, like Nevada. For example, in the last year, the state supreme courts of Georgia and Oklahoma both ruled that, even though their state's sentencing scheme was discretionary, they were still subject to the *Montgomery* decision that said life without parole is unconstitutional for children.

The option with the four remaining cases in Nevada will be to either go through resentencing hearings where the judge will need to have an option other than life without parole to handle those cases, or make those individuals eligible for parole similar to what was done in A.B. 267 of the 78th Session. Assembly Bill 251 was meant to be very narrowly tailored specifically for the four remaining cases to allow the Pardons Boards to look at those cases and, hopefully, commute them. If they are commuted to parole-eligible sentences, Nevada will be in full compliance and will not have to go through the resentencing process.

I will read you a quote from the *Montgomery* decision:

> Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment. . . . Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit heinous crimes are capable of change.

There is a simple and easy way for compliance, which is to make sure that anyone who was previously sentenced to life without parole in the state of Nevada has an opportunity to see the State Board of Parole Commissioners. This will have an enhanced step because they will need to first prove their case before the Pardons Board before they can even get to the Parole Board. At least that avenue exists to help the state come into compliance. Right now there is no avenue outside of the legislative change except for these individuals to go back to court for resentencing.

Assemblyman Anderson:
It is important to tie that down for the Committee. After reading the decision cited in the bill, I have moved on from the bill. It feels like we are getting into a policy debate when it is more of a compliance issue.

James Dold:
That is correct.

Assemblyman Anderson:
I do not want us to get lost.

Chairman Ohrenschall:
Our Pardons Board is structured in the *Nevada Constitution* and is made up of our seven Supreme Court justices, the Attorney General, and the Governor. The Governor has veto power over any decision to grant a pardon or to commute a sentence. There are very knowledgeable people on the Pardons Board. The difficulties that the Pardons Board has had in recent years is its inability to meet and to have a quorum with the busy schedules that the Supreme Court justices and the others have trying to find a day or two when they can meet. If Assembly Bill 251 passes, but the Pardons Board cannot meet this year or they do not act on this, what do you envision the next step is for those four individuals?

James Dold:
I have not talked to the attorneys, but I imagine they will begin to file habeas petitions to go back into court for resentencing. The hope is that this will allow the Pardons Board to commute their sentences. One of the reasons we did not go back and amend A.B. 267 of the 78th Session is that we had developed that legislation in conjunction with the Advisory Council for Prosecuting Attorneys and we did not want to be double dealing. I had not had a chance to talk to John Jones at the Nevada District Attorneys Association about those four cases and the *Montgomery* decision. This seemed like a good interim step to bring the state into compliance with those decisions. Alternatively, it could be done by amending A.B. 267 of the 78th Session to include those individuals with no more than two victims in their cases. I do not know what the issues would be for the prosecuting attorneys in those instances, which is why Assembly Bill 251 felt like the most conservative step we could take by sending it to the Pardons Board where the Attorney General and the Governor sit. If these cases are not acted upon, I imagine their attorneys will eventually file habeas petitions.

Chairman Ohrenschall:
Anyone who would like to speak in favor of Assembly Bill 251, here or in Las Vegas, please step forward.

Kristina Wildeveld, Attorney, Nevada Attorneys for Criminal Justice:
I am here in support of A.B. 251, and I am one of the attorneys representing one of the four boys who are serving a life without parole sentence that was not included in A.B. 267 of the 78th Session. I was originally Ken Shawn Maxey's attorney back in 1998, and I am again. This bill affects four boys who were left out of A.B. 267 of the 78th Session. It does not guarantee them any ability to get out of prison; it just guarantees an ability to go before the Parole Board. There is Johnny Ray Luckett, whose crime was committed in 1985. He was 17 years old at that time. Michael Dominguez was 16 years old when he committed his crime in 1993. Ken Shawn Maxey, whose crime was committed in 1998, was 16 years old. Giles Manley, whose crime was committed in 2002, was 16 years old. Out of the four boys, at least three of them were death penalty cases, and at least three of them went to a jury verdict and one of them pled. Back in those days, the death penalty was okay for a 16-year-old, but today it is not. Those of you on the Committee who are attorneys know that oftentimes juries do what is called a "step down" decision if they do not want to give someone the death penalty. Some of those boys ended up with a life-without-parole sentence.

There are two other boys who did not receive a life-without-parole sentence for a double homicide—they received life with the possibility of parole for a double homicide—that were not included in A.B. 267 of the 78th Session. That just goes to show you the disparity. It all comes down to the prosecutors who are prosecuting the case and how certain cases move through the system. This bill only serves to equalize those and to bring the bill into compliance with the laws as they are now. We ask that this bill be passed so the offenders have the opportunity to one day go before the Pardons Board, and then go before the Parole Board to possibly get out if the Parole Board sees fit.

Just last month, I wrote the Offender Management Division at the Department of Corrections on behalf of Ken Shawn Maxey. He has been in prison for 19 years. He is on waitlists for education and a job. Because of his sentencing structure, life without the possibility of parole, he cannot program, get a job, or anything. For 19 years he has done nothing; he is just being incarcerated. He was a foster child the majority of his life before prison. His father was in prison and his mother was killed when Ken was seven years old. She was discarded on the side of the road as a prostitute here in Nevada. He was a foster child and raised by the system. The state elected to seek the death penalty for him. The second person he killed in his crime—he was involved in the Oasis Bar murder on Rainbow Boulevard and Lake Mead Boulevard—was his 18-year-old codefendant who had planned the robbery. The codefendant stood behind the bartender in the struggle for the gun. Ken Shawn shot his gun and the bullet went through the bartender and into the codefendant who was standing behind him. That is why he received a double homicide and life without parole.

Chairman Ohrenschall:
Please explain how difficult it is to get a client on the agenda for the Pardons Board and how rarely pardons or commutations are granted. It is important for the members to understand that, if Assembly Bill 251 passes, it simply gives the boys an opportunity to be considered by the Pardons Board; it does not mean they will act.

Kristina Wildeveld:
The Pardons Board is a very difficult board to get before. As the Chairman said, it is composed of the Governor, the Supreme Court justices, and the Attorney General. There are thousands of petitions that go before the Pardons Board and very few are selected. Even if selected, if there is any opposition to the granting of a pardon, most likely that pardon will not be granted. In these cases, it would be more of a compliance pardon than anything else. These guys would most likely not be granted clemency. I do not see any of these boys being granted immediate eligibility for parole, even for Johnny Ray Luckett who has been in custody for 32 years. I just see them having the life without the possibility of parole commuted. Giles Manley's case involved a Nevada Highway Patrol trooper. Every time there is a police officer involved in anything, the unions show up for the Pardons Board. For him to ever get a pardon would be nearly impossible. It would more likely be a commutation of his sentence.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
I am testifying in support of Assembly Bill 251. Much of what I had to say Ms. Wildeveld covered. In addition to my work with the American Civil Liberties Union of Nevada, I am also representing Johnny Ray Luckett in the matter of getting him before the Parole Board.

I want to address some of the questions that came up. Mr. Dold touched on some of them, but that was regarding coming into compliance with the *Miller* and *Montgomery* decisions. The law says that these children—now grown men—need to be given a meaningful opportunity to parole because of the age they were when they committed these crimes. If we are unsuccessful with this bill, or even if this bill passes, we still have the law on our side to get these men out of prison, or at least before the Parole Board. One of the mechanisms that we are using with habeas petitions is to file a motion to correct an illegal sentence under the *Miller* decision. We are hoping to find a statutory solution for this so we can help these individuals.

I spoke about Mr. Luckett last session when we were discussing A.B. 267 of the 78th Session in this similar context. Mr. Luckett was not the primary perpetrator in his crime, but he was present at the scene. He did not actually murder anyone, and he is in prison for life without parole. He is not covered under A.B. 267 of the 78th Session. In the interest of justice, Assembly Bill 251 will serve him and help him get the justice he deserves to return home to his family.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
We just want to register our support for Assembly Bill 251 as well. All of my points have been covered, so for the sake of brevity, I will submit to this Committee that we are in support of Assembly Bill 251.

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:
I would be a "me, too" as well.

Chairman Ohrenschall:
Is there anyone else who would like to speak in support of Assembly Bill 251, here or in Las Vegas?

Tonja Brown, Private Citizen, Carson City, Nevada:
We are in support of this bill.

Chairman Ohrenschall:
Is there anyone else who would like to speak in support of Assembly Bill 251, here or in Las Vegas? [There was no one.] I will move to opposition and anyone opposed to Assembly Bill 251. [There was no one.] Is there anyone who is neutral on the bill and wants to be heard? [There was no one.] Assemblyman Hambrick, do you have any closing comments? I am sorry, but there is someone in Las Vegas.

Glen A. Meek, Private Citizen, Las Vegas, Nevada:
I have a couple of questions, especially on some issues that were raised. There has been a recent issue in Las Vegas where an individual was made eligible via A.B. 267 of the 78th Session and was paroled.

Chairman Ohrenschall:
Pardon me. If you have specific questions about specific cases, you can email them to me or to the Committee staff.

Glen Meek:
It is about the issue that you raised regarding whether a victim has notification. My understanding from the Parole Board is that victims are notified if they sign up. One of the issues with A.B. 267 of the 78th Session was that a lot of people may have left the state. When they left the state, they were victims traumatized by the event, and did not know that A.B. 267 of the 78th Session made the offender available for parole. There were some people who registered a lot of surprise when that occurred. There have been a lot of publicity and news reports about A.B. 267 of the 78th Session here, but people out of state may not have been aware of it. It is my understanding that you have to sign up, and there were people who did not sign up because they did not think they would ever need to.

My other issue is on the numbers. Mr. Dold said there were 20 individuals who were affected by A.B. 267 of the 78th Session, but I was just on the phone with the Department of Corrections and they indicated there were 88 inmates identified as being affected by A.B. 267 of the 78th Session. I am trying to understand where the numbers came from. It appears there are only the four individuals named already that will be affected by Assembly Bill 251. I would like Mr. Dold to help me understand what is going on with those numbers. Are there 88?

Chairman Ohrenschall:
I am happy to give you contact information for Mr. Dold, and to take any comments you have on the bill, but members ask the questions. If there are any other comments on the bill that you would like to make, please proceed. If not, I will get you connected with Mr. Dold offline.

Assemblyman Hambrick:
I think this bill is important. When we say "four lives" it sounds like a small number, but it is not a small number to the four individuals who will be affected by it.

Chairman Ohrenschall:
We will close the hearing on Assembly Bill 251. We will now open the hearing on Assembly Bill 259.

Assembly Bill 259: Revises provisions relating to certain criminal convictions and sentences. (BDR 14-657)

Assemblyman William McCurdy II, Assembly District No. 6:
With your permission, I would like to discuss Assembly Bill 259 and then answer any questions the Committee may have. Assembly Bill 259 addresses convictions and sentencing related to marijuana offenses. Section 1 of the bill authorizes the court to grant a motion to vacate a judgment of conviction for a violation of any provision of law concerning certain offenses involving marijuana committed in this state that will constitute a lawful act on or after January 1, 2017. This bill also requires the court—we will look to change that to "petitioner"—to notify the prosecuting attorney, and allows them to testify and present evidence before the court decides whether to grant that motion. Assembly Bill 259 allows the court to grant a motion to vacate a judgment if the judgment is a conviction for the possession of one ounce or less of marijuana.

As you know, after the passage of State Ballot Question 2 in 2016, it is now legal for adults 21 years of age or older in Nevada to possess up to an ounce of marijuana or up to one-eighth of an ounce of cannabis concentrate. It is not legal to smoke it in public. You cannot buy or sell recreational marijuana yet. The measure was approved by 54.4 percent of Nevada voters. The Department of Taxation is currently creating regulations for licensed medical shops to sell recreationally. While not all of the laws or regulations for marijuana use are in place, this part of the bill will modify the law to support the passage of Question 2.

Assembly Bill 259 also authorizes a court to depart from the prescribed minimum terms of imprisonment for the possession of controlled substances in certain circumstances. As you can see in the bill, if the offense did not involve the use, attempted use, or threatened use of physical force against another person; if the offense did not result in any physical injury to another person during the commission of the offense; if the person was not in possession of, did not threaten the use of, or display or represent that he or she was in the possession of a weapon; and if the provisions of this subsection have not been previously applied, those are the circumstances. This would be for the first-time offenders. At the time of sentencing, the court would express the reason for imposing a particular sentence.

Now, we are all familiar with the war on drugs, mandatory minimum sentencing, and the effects of these on prison populations in the 1980s and 1990s. According to the National Conference of State Legislatures, between 1980 and 2009, there was a 138 percent increase in the arrest rate for possessing or using drugs and a 77 percent increase in the arrest rate for selling or manufacturing drugs. In 2011, 53 percent of the states' inmates met the medical criteria for substance abuse. Most offenders serving time need rehabilitation and other alternatives. They do not need a longer sentence. Mandatory minimum sentencing is more detrimental than it is helpful to individuals who use drugs. They should not be incarcerated. Given the challenges throughout prison systems across the country—increasing costs and overpopulation—the national focus is shifting from imprisonment to utilizing effective community supervision and treatment options.

In the past five years, more than a third of the states have made changes to drug penalties and mandatory sentencing. They have lower penalties for smaller amounts of drugs, and some have opted to increase penalties for large quantities and drug trafficking. Many researchers

have found that a longer sentence does not equate to less crime. Assembly Bill 259 lays out some legislative groundwork for the changing times in our state. Nevada voted in November and now our laws must reflect those results. We have an opportunity to reform our criminal justice system, and I hope to have your support on Assembly Bill 259.

It is important for me to walk you through the bill. Section 1, subsection 5 states that, "The court: (a) Shall grant a motion to vacate a judgment if the judgment is a conviction for the possession of 1 ounce or less of marijuana in violation of subsection 4 of NRS 453.336 [*Nevada Revised Statutes*]." It continues, "(b) Except as otherwise provided in paragraph (a), may grant a motion to vacate a judgment if the judgment is a conviction for a violation of any provision of law concerning an offense involving marijuana, if the act constituting the offense is a lawful act in this State on or after January 1, 2017." This just applies to less than one ounce of marijuana, which is now legal in our state. It is important for me to note that this is to help low-level drug offenders have the ability to have this vacated.

Moving on to section 1, subsection 7, this is where we will change the word from "court" to "petitioner." It says in paragraph (a) that "the court must notify the prosecuting attorney who prosecuted the defendant for the crime and allow the prosecuting attorney to testify and present evidence before the court decides whether to grant the motion." We will change it from "court" to "petitioner" because the responsibility to notify the district attorney should be on the petitioner.

Section 2, subsection 5, says, "Notwithstanding any other provision of law, if a person is convicted of a violation of any provision of this section which is punishable by the imposition of a minimum term of imprisonment, the court may, upon a showing of good cause by the person, depart from the prescribed minimum term of imprisonment . . . . " It says they "may" depart from the minimum sentencing if they choose to do so.

Chairman Ohrenschall:
This legislation seems to follow a national trend, especially section 2 in terms of connecting people with drug abuse issues with drug treatment as opposed to incarceration.

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:
In speaking with Assemblyman McCurdy about this bill, we discussed how this bill mainly focuses on low-level, nonviolent drug offenders. Section 2 particularly focuses on first-time, low-level, nonviolent drug offenders and allowing the court to depart from the mandatory minimum terms of imprisonment. I know there was an amendment proposed by the district attorney's office that would seek to move this statute to the record-sealing statute. As most people on this Committee know, the record-sealing statute is arduous and it takes a long period of time. I believe it was the Assemblyman's intent to just add the low-level marijuana possession to make it an easier sealing process. If you go to section 1, subsection 8, where it says, ". . . the court: (a) Shall vacate the judgment and dismiss the accusatory pleading; and (b) May take any additional action that the court deems appropriate

under the circumstances." I read that section to give the court permission to seal if it vacates. It does not mandate the court to do so, but it does allow the court permission to do so on that one-time, low-level marijuana offense.

The City of Henderson has raised a concern that you will hear. Its municipal courts claim that this may open the floodgates. I think that claim is overstated as most people arrested for possession of marijuana under an ounce normally plead to possession of a dangerous drug not to be introduced in interstate commerce. Those are not eligible for pursuing under this statute.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
Mr. Piro has done an excellent job in outlining my concerns as well. This bill deals with low-level, nonviolent drug offenders without the use of a weapon. As I have stated in the past to this Committee, I am a huge proponent of giving the court discretion to depart from minimum mandatory sentences when necessary. Other than that, my points have already been covered.

Assemblyman Yeager:
Mr. Piro indicated that you thought something in here gave the court the ability to seal a record pursuant to a petition. Can you point me to the language that you were referencing?

John Piro:
Yes. Section 1, subsection 8, paragraph (a) says, "Shall vacate the judgment and dismiss the accusatory pleading; and (b) May take any additional action that the court deems appropriate under the circumstances."

Assemblyman Yeager:
I have spoken with the sponsor about this previously, but my concern with section 2, subsection 3 is that it appears the intent of the bill is to allow folks to potentially reduce drug convictions, or allows the court to depart from a minimum sentence on a drug case. However, subsection 3 applies to gamma-hydroxybutyrate (GHB), which is commonly known as the "date rape" drug. My understanding is that this particular substance is not for personal use; it is for more sinister motives. Would you be willing to strike that section out so that possession of GHB would remain a category B felony?

Assemblyman McCurdy:
Yes, I would agree to that. Going down a little further on page 4 from line 17 through line 38, the whole section needs to be struck because it no longer applies to the law. I will be looking to strike that as well since it no longer applies.

Assemblyman Anderson:
In general, this is a good idea when we are simply talking about one ounce or less of marijuana and it is nonviolent. My understanding is that this is not even being charged in Clark County any more. I will ask that question of the district attorney when he comes up. After the marijuana initiative passed, I recall the district attorney's office announcing that

they will not charge for these low-level possession crimes. Is this inclusive enough regarding what it is citing to? I will leave this to you two, Mr. Piro and Mr. Sullivan, because you are in court a lot. Many of these cases are pled down to possession of a controlled substance, right? Is this something that is done when you have a possession of marijuana charge? Is this potentially pled down to a lesser charge?

John Piro:
You are correct. We plead it to possession of a dangerous drug not to be introduced in interstate commerce, which is a non-enhanceable misdemeanor drug offense. Most possession of marijuana under an ounce were pled to that. To answer the other part of your question, yes, the district attorney said that he is not going to be charging this now that Question 2 has passed.

Assemblyman Anderson:
If this bill moves forward, I think it is important for us to cite to the possession of dangerous drugs not to be introduced to interstate commerce and to tie that to marijuana as well. If the original charge was this, but it was pled down to that, we need to make it clear that it was nonviolent, and there was less than an ounce of marijuana that was pled down. We should keep this in mind because I think there will be a number of people who have that charge. We saw that when we were talking about vacating sentences for child sex-trafficking victims. Oftentimes they were charged, or they pled down to other things such as trespassing. I would hate for this bill to be underinclusive and not get to its full effect of helping people get these low-level, nonviolent drug convictions off their record so they can get jobs and be productive members of society. That is the ultimate goal and why voters indicated they do not want to do this anymore because they feel silly charging people for less than an ounce of marijuana.

Assemblyman McCurdy:
Yes, that is something that would enhance the bill.

Assemblyman Hansen:
We just heard a bill that requires Nevada to come into compliance with federal law. We have U.S. Supreme Court decisions that we have to comply with. Federal law still does not allow the use of marijuana. I do not know the particulars of it, but we have these big trains coming from two directions: U.S. Attorney General Jeff Sessions, who has made it very clear that he intends to enforce federal law, and all of us who have sworn an oath to uphold the federal law as being supreme. We are always adjusting laws in the state to come into compliance with the federal laws and Supreme Court decisions, so I wonder how we reconcile this.

Sean Sullivan:
That is a very good point. Marijuana is still a schedule I controlled substance under federal law and is still regulated. I did see a directive from Attorney General Sessions not too long ago wherein he is directing all U.S. Attorneys and Assistant U.S. Attorneys to enforce the laws. It was basically aimed at violent offenders. I think the tone and tenor of what Mr. Sessions is getting at is the violent offenders when it comes to drug usage, or any other violent offense.

Assemblyman Hansen:
I agree. I am a realist in the real world. I do not want people going to prison for a minor drug offense. Assemblywoman Michele Fiori was on this committee when I chaired it. She was quite insistent that Nevada prisons are full of people who are in for very minor drug things. I had the Legislative Counsel Bureau do research on it, and it turns out that there is almost no one in prison anymore on minor marijuana charges. We have already taken care of that, but I have concerns. We have a train wreck coming with the state of Nevada and the U.S. Attorney General. We are going to clash over state law versus federal law. I think everyone in Nevada is pretty comfortable with the idea of minor marijuana possession being no more than a ticket. I am still worried. No one supports violent anything, but I suspect that violent people start out nonviolent when entering the drug world. The entire idea of one drug leading to another drug and to another is my concern. I support the concept, but I see some concerns down the road with how we are approaching marijuana in Nevada.

Assemblywoman Cohen:
Nothing in this bill stops the federal government and federal agencies from enforcing federal law. Right?

John Piro:
You are correct.

Assemblywoman Cohen:
Oftentimes with criminal convictions, there is a bundling of convictions with a lot of different charges. How does this bill affect when charges have been bundled and plea deals made? Will there be an issue with that?

John Piro:
I am trying to understand your question.

Assemblywoman Cohen:
When someone comes back for relief because of this bill, but they had several different convictions that were bundled together with a plea deal, is unbundling going to be a problem for these people? Assemblyman Anderson touched on pleading down a bit, but just in general. When you have multiple charges, is untangling them going to be difficult, or is that easily accomplished?

John Piro:
I understand that this bill applies only to marijuana amounts under an ounce, so those are the offenses that will be looked at. If there is something more serious, it will not be covered by this bill. On your scope, you have individual pockets, or entries, for each charge that you receive, so it would be easy to pick out the possession of marijuana under an ounce from there.

Assemblywoman Cohen:
One does not rely on the other just because there was a plea deal made with different charges all together. They are not necessarily reliant on each other, so if you pull one conviction out it does not make the whole agreement fall apart, correct?

John Piro:
No.

Assemblyman Pickard:
Assemblyman McCurdy, would you point us to the section that you thought should be stricken. I was lost there.

Assemblyman McCurdy:
The section I was looking at is section 2, subsection 4 in its entirety. These laws have been changed and they no longer apply.

[Assemblyman Yeager assumed the Chair.]

Assemblyman Pickard:
I want to clear up possible conflicting testimony. I heard that District Attorney Wolfson would not charge for these offenses after passage, but this bill seeks to undo valid sentences for crimes actually committed after passage. I have a fundamental problem with substituting the judgment of the Legislature over that of the court. Which is it? Are we talking about crimes that were committed but not charged? I am confused.

John Piro:
Let me give you a little backstory. After Question 2 passed, the district attorney's office adopted a policy that they were not going to charge marijuana under an ounce and they would keep the charge. They would allow people to plea to possession of a dangerous drug not to be introduced in interstate commerce, but they would not continue to charge possession of marijuana under an ounce at that time. As far as the validity of the convictions, are you saying the law was legal before Question 2 passed?

Assemblyman Pickard:
No. I understand that the bill vacates a judgment for an act after January 1, 2017. That was after passage, in section 1, subsection 5, paragraph (b). I am curious because that does not seem to comport with the testimony that District Attorney Wolfson would not charge for that crime after January 1, 2017. Could we possibly be writing a law for something that does not exist? Am I reading it wrong?

Assemblyman McCurdy:
Can you state that one more time?

Vice Chairman Yeager:
If I can interject, I think this will help the confusion. I think Assemblyman Pickard may be misreading the bill. What the bill does by its language is that it allows someone to vacate a conviction for a previous conviction if the conduct would be lawful after January 1, 2017. That is set into law; that is the passage of Question 2.

Assemblyman Pickard:
You are right, and that clears it up for me.

Assemblyman Thompson:
This hit home for my family. When my cousin—who had never gotten into trouble—was 17 years old, he was charged with less than an ounce. He served 16 years. He was not violent or anything like that. I want my peers to know, however, that he is very successful now, and he is working and has a family.

[Assemblyman Ohrenschall reassumed the Chair.]

Do you have any idea how many people have fallen into this category over the last two years or so? How many possible cases do we have? I am not saying it is right or wrong, but that is the reality.

Sean Sullivan:
That is a fair question. We have a reasonable number of persons who would be affected by this bill. We also have others who would not benefit from this bill. Not long ago, I had a gentleman write me a letter when he realized that Question 2 had passed and after he sold a large amount of marijuana to an undercover police officer. I had to write back to tell him that the benefit of Question 2, or any new legislation, would not benefit him because his was an unlawful act even after Question 2 passed. There are a fair number of people who will benefit from this piece of legislation.

John Piro:
There will be a fair number of people who will be helped by this legislation. If we were to modify it the way Assemblyman Anderson suggests—which would make it a much better bill—there would be a lot of people who would be helped by this legislation. The bulk of our practice is quick pleas in the morning, pleas to possession of dangerous drugs not to be introduced in interstate commerce. There would be a lot of people helped, even if we keep it to marijuana.

Assemblyman Wheeler:
We talked about people who were originally charged under this statute that pled down to lesser crimes. Do you have an idea of how many people were charged with greater crimes but pled down to this level that would now have vacated sentences because of this legislation?

John Piro:
If it was a possession of a controlled substance like heroin or methamphetamine and they pled to possession of a dangerous drug not to be introduced in interstate commerce, they would not be covered by this statute.

Assemblyman Wheeler:
Obviously we see a lot of plea deals pleading to a lesser charge. What I want to know is how many people would be allowed to have their sentence vacated who actually committed a greater offense, but pled to this charge? Do you have any idea, or do you have any way to find out?

John Piro:
I do not think it would be a large number. I know that is anecdotal, so I hate to say it. It is general practice that if you come in with possession of marijuana under an ounce, you plead it to possession of a dangerous drug not to be introduced in interstate commerce because it is a nonenhanceable misdemeanor. That is what district attorneys and counsel for a defendant usually agree to. It would help those people, but it is not going to help a marijuana trafficker. That would not get pled down.

Assemblyman Anderson:
Assemblyman McCurdy referred to section 2, subsection 4, which is existing law. I am not sure that it should be struck. I do not know what the initiative actually did. I do not know exactly how it would affect existing law, but my understanding is that the question contemplates a regulatory scheme under which people would purchase marijuana. I think there would still be the technical need to criminalize people who go outside of that. Does that make sense? Although I did not take a position on the initiative, I think the whole point, and the most compelling argument, is that we need to go after the cartels and the black market, the people who are selling this illegally. This is just possession, but I am not sure we are ready to lineout this existing law. There is still a regulatory process to take effect. We need more testimony before we consider that type of strikeout. The process is not right yet, and we ought to put on the brakes.

Assemblyman McCurdy:
That is actually pretty valid and I will consult with legal counsel before we strike out any language, especially if any of it needs to stay.

Chairman Ohrenschall:
Unfortunately, we do not have our legal counsel here due to the drafting deadline, but we will follow up with Mr. Wilkinson.

Assemblyman Anderson:
I see a couple of marijuana advocates in the room. It might be important to get some testimony from them if they are willing.

Chairman Ohrenschall:
We will open it up for anyone who would like to speak in support of Assembly Bill 259, either here or in Las Vegas.

Will Adler, Private Citizen, Carson City, Nevada:
I was the political director of the Question 2 campaign. In researching the question, we went out to find some drug statistics to determine where this campaign fit into Nevada's law. We wanted to see what we would be preventing in the future with regard to drug crimes. What we discovered was that there have not been a lot of convictions in the last five years; however, there have been a lot of pleas and step downs from the marijuana policy. If you go back five, eight, or ten years, marijuana possession was a serious felony back then. If you go back 20 years, it was a 15-year felony for just possession of marijuana in Nevada. We had some of the strictest marijuana laws up until the last five years. It was discretionary. If you were in Las Vegas, it might not be a huge deal, but if you got busted in Elko, they would throw you out with the full penalty of the law.

That was something that a lot of people in Nevada wanted to see: the removal of marijuana possession as a crime. This is also like saying that you had a prior possession charge so go ahead and remove it because we are now making you part of Nevada's current law instead of the prior law of extreme penalty.

I have talked to many people in a lot of different industries and trades, and they said that they have people they would love to hire, but they have a marijuana possession charge against them. They cannot put them behind the wheel of a backhoe or with heavy machinery. The insurance will not cover them. If someone could expunge their record, it would help Nevada in many ways, including employment.

Assemblyman Hansen:
Your last point is very interesting because worker safety is a huge issue. We just had a bill in the Assembly Committee on Commerce and Labor about expanding upon the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor requirements. One of the major concerns in construction is that most of the accidents and fatalities involve alcohol and drugs. The fact that you expunge it off your record does not change the fact that you can be a dangerous person when operating equipment. I am uncomfortable with expunging it because an employer would unknowingly hire someone who is dangerous. If that is in the bill, it makes me very uncomfortable.

Will Adler:
It is not the intent of this bill to allow people to conceal their past. You, as an employer, still have the right to hire, fire, and randomly test employees for drugs, including marijuana. You are allowed to say that any drug use is not permitted on your job site. You can still drug test in your initial screening and fire someone for drug use. I am just saying that the pool of workers you can choose from would be larger. I know plenty of people who had a marijuana

conviction when they were 19 years old, but have grown to be very respectable adults with families and who do not use marijuana any longer. The black mark is still there although they may not currently do drugs. That simple possession charge still shows up.

Assemblyman Hansen:
If it was 20 years ago, that would be fine. However, if it was last year, I would take that into account before hiring him and using him on heavy equipment.

Assemblyman Anderson:
Since you worked on the initiative, can you comment on how that affects existing law and the existing possession crimes?

Chairman Ohrenschall:
Mr. Adler, I am happy to have you try to answer that, but the public defender can also answer that.

Will Adler:
The initiative that became Ballot Question 2 in the November election takes simple drug possession of one ounce or less of marijuana, or one-eighth of an ounce of concentrated marijuana, and makes it a non-penalty. It is legal to possess it. Anything above that level, or distribution, would still be the same drug charges as before. Nevada's current crimes have only one felony charge for marijuana, and that is transportation of bulk quantities, which would be around 50 pounds of marijuana or 1 pound of concentrated cannabis. Everything else is a misdemeanor as far as I know. The campaign made it fully legal to possess one ounce or less of marijuana.

Assemblyman Anderson:
It seems like that is on point with the language that Assemblyman McCurdy was discussing. I will talk with legal counsel offline.

Assemblyman Pickard:
Mr. Adler just made the comment about 10 or 20 years ago. As I understand this bill, and it may be a question for defense counsel, we are amending the section that allows the court to grant a new trial. Under section 1, subsection 3, and this is existing law, it says it is limited to going back two years. Is it your understanding that we are opening the doors to every conviction for possession of one ounce or less?

Chairman Ohrenschall:
I would like to reach out to Mr. Piro or Mr. Sullivan to answer that question. It may also be something we need to defer to legal counsel.

Assemblyman Pickard:
I was just wondering if it was his understanding that this was going to open doors as much as the legal question.

Will Adler:
No. I was thinking more about the possibility of adding future clauses. This would be available if they pled down, or whatever might be needed in the future. If you look back to the history of Nevada's marijuana laws, we were pretty strict on them and this would help with that. Hearing from the bill's sponsor, they are not trying to go back 20 years.

Assemblyman Pickard:
Very good. I just wanted to ensure I was clear on that.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
We support this bill and endorse the Question 2 initiative for reasons of criminal justice reform. Since 1976, we have been advocating for the decriminalization of marijuana in Nevada. A couple of issues came up when discussing this bill. Some local governments are concerned that this could impact the courts by having an influx of petitions to vacate convictions.

I checked with some of our affiliates that have decriminalized marijuana or have limited criminal penalties on marijuana. The state of Oregon has expungements available to those convicted of offenses that are now legal under recreational marijuana laws. They are having a flood of expungements, but they have created a very streamlined, simple process for dealing with those. We would be happy to share what those processes look like with local governments to make it easier for them.

Before I talk about Connecticut, I want to talk about the policy. It is a common policy practice to allow for expungements of crimes that are now legal under new laws: for example-sodomy laws, alcohol, and interracial marriages. People are allowed to go back and vacate those convictions from their record so they can move on with their lives and not have criminal penalties following them.

Connecticut went very far in the *General Statutes of Connecticut* in 1980 with section 54-142d, which grants mandatory erasure of convictions for any offense later decriminalized. That also applies to their decriminalization of marijuana.

Steve Jimenez, Extern, Nevada Hispanic Legislative Caucus:
This is a challenging but necessary bill. The narrow tailoring of this bill—specifically regarding the specificity of the charges and the one-time chance to avail yourself of the provisions of this bill—is really key in representing the wishes of Nevadans that was shown last November. The Nevada Hispanic Legislative Caucus supports Assembly Bill 259.

Scot Rutledge, representing the Nevada Cannabis Coalition:
The Nevada Cannabis Coalition represents several medical marijuana establishment (MME) license holders, MME businesses that control dozens of licenses and employ hundreds of Nevadans. During the 2016 campaign to regulate marijuana like alcohol, also known as Question 2, the discussions of failed prohibition laws and the damage that they have caused, especially to low-income communities and communities of color, came up quite often.

A nonviolent marijuana conviction can be an obstacle to future employment opportunities for Nevadans to get ahead and to do something with their lives. The industry recognizes that the licenses that they have been given to grow and dispense marijuana is a privilege that also gives them a social responsibility to give back to our communities.

We are here today to voice our support for A. B. 259. Most of us know the history of marijuana prohibition in this country dating back to the earlier part of the twentieth century. It is important to remember that, at one time, the federal government regulated and taxed marijuana though public perception would be altered and new laws would be enacted as "reefer madness" took hold. Now that Nevada has passed Question 2 and it is legal for adults 21 years of age and older to possess up to an ounce of marijuana, it seems only fair and equitable to allow those who have convictions for what was then an illegal offense to be exonerated. These individuals have paid their debt to society and should be allowed to proceed with their lives without the stigma of having a marijuana conviction on their record.

Chairman Ohrenschall:
Is there anyone else who would like to speak in support of Assembly Bill 259, here or in Las Vegas?

Tonja Brown, Private Citizen, Carson City, Nevada:
We support this bill.

Chairman Ohrenschall:
I will move to opposition for anyone who would like to speak in opposition to the bill.

John T. Jones, Jr., representing Nevada District Attorneys Association:
We are in opposition to Assembly Bill 259, but I want to thank Assemblyman McCurdy for meeting with us and agreeing to work with us on our concerns. Before I get into the bulk of my testimony, I want to state for the record that witnesses up here have been using the terms "vacate" and "seal" interchangeably. They are not the same thing, and I want to make sure the Committee knows that vacating a conviction is not the same thing as sealing it. If you vacate a conviction, the arrest is entirely visible. All of the court proceedings are entirely visible. Even if your judgment of conviction is vacated, you can still go on the Internet and find the court proceeding where all of the activities took place, including the plea and the vacation of the sentence.

What we, the Nevada District Attorneys Association, are arguing for is sealing. With a sealing, the arrest and any record of the arrest goes away, as well as any record of the court proceeding. I want to say for the record that we are in support of the intent behind section 1. We are not opposing the intent behind it, but what we are saying is that there is a better way to go about doing what Assemblyman McCurdy wants to do. I would hate for a defendant to think when he files a motion to vacate a judgment that the judgment is dismissed and that the process ends there, because it does not. Under this bill, they would

file a motion to vacate and have to turn around and go through the sealing process. We have added a step when they could, in fact, go through the sealing process and do both things at once.

With respect to Public Defender John Piro indicating that there is a provision that gives the judge the ability to take any additional action that the court deems appropriate, I do agree that that is in statute. However, a judge cannot seal a case just *sua sponte*, meaning "on their own," because the sealing statute requires certain things to be done. If those things are not done, and the court seals a case anyway, that is abuse of discretion and is challengeable by our office or anyone else.

Our amendment (Exhibit E) makes clear that the language in section 1 would be deleted and we would make a new subsection under *Nevada Revised Statutes* (NRS) 179.245, which is the sealing of records statute. If we put everything in there, the entire case would be invisible to employers, law enforcement, and the courts. That is the appropriate place to do what the Assemblyman wants to do with section 1.

Chairman Ohrenschall:
To be clear, this is an amendment that has not been accepted by the sponsor. Is this considered a friendly amendment now?

John Jones:
It is not friendly yet. We have agreed to continue working together, and we are doing so in good faith.

Chairman Ohrenschall:
You said that the amendment would fit in under section 1, subsection 4. Is that correct?

John Jones:
Our amendment, as of now, would strike section 1 entirely from the bill. In its place, we would add a new subsection 8 to NRS 179.245. I have given some sample language on the amendment that we would add.

I want to state for the record that I know Assemblyman Thompson and others have worked on sealing. The public defenders are not entirely incorrect when they say the sealing process is arduous. We are in agreement that we might be able to do some things to streamline that process for defendants. To that end, I think this would work in conjunction with some sealing reforms that Assemblyman Thompson and others are working on.

With respect to section 2, it is the opinion of the Nevada District Attorneys Association that we should strike that completely from the record. There are other statutes currently on the books that would have the same end as section 2. Those of you who are familiar with the criminal justice system might know it as "3363 treatment." It allows a judge to suspend the proceedings and divert those accused of low-level narcotics like marijuana and other offenses. It applies to the same basic defendants that section 2 applies to, those who have not

previously been convicted of offenses. It also provides that they go to drug treatment and then the case will ultimately be dismissed. I would argue that the "3363 treatment" already allows for what section 2 attempts to allow.

Section 2 applies to cases and defendants that are already eligible for what we call mandatory probation. *Nevada Revised Statutes* (NRS) 193.130 says that category E felonies, which most of these are, are punishable by one to four years in prison, but a judge must give probation to these offenders unless they were on probation when they committed the offense; they have previously been revoked from parole or probation; they failed a treatment program in the past; or they have been convicted of a felony two or more times. It is the opinion of the Nevada District Attorneys Association that section 2 is not necessary and should be removed from the bill.

I believe Assemblyman Yeager had a great point about the date rape drug. Assemblyman Wheeler also had a good point when he talked about how we use the "PCS statute"—possession of a controlled substance—as a drop down for other offenses. For example, if someone possesses four or more grams of a drug, that is a trafficking-level offense. If they do not have a record, oftentimes we will reduce that to a possession of a controlled substance offense. This section, as amended by Assemblyman McCurdy, could cause some hesitation among the district attorneys to negotiate trafficking down to PCS. We might now ask for a PCS with intent.

Those are the basics of our objections to the bill. I want to thank Assemblyman McCurdy for working with us. If we continue to work together, we will be able to come up with some amendments that we can all agree on.

Down south, I have Chief Deputy District Attorney Bart Pace. He is in the Clark County District Attorney's Office and he handles all of our sealings. He is very familiar with the sealing process and can better explain the differences between vacating a judgment and the sealing process if this Committee has any questions about the distinction between the two.

Assemblyman Anderson:
You hit the nail on the head regarding our hesitation to go to the record sealing statutes. Many of us on this Committee spent all day at the recent record sealing event, and it was a pain. It took a lot to get that together and to actually do it with some of the best lawyers in the room. It was remarkably hard. It took the Legal Aid Center of Southern Nevada three months to catch up on all the paperwork once it was over. I am not saying it is right or wrong. Would you, or could you, get on board with some type of streamlined record-sealing process for things that are no longer criminalized? If there is a lawful judgment by whomever—whether it is the voters, the courts, or the Legislature—that these things are no longer crimes, what is the harm of sealing them so people can get on with their lives? We are not charging this anymore, so we should not make people jump through hoops if it is not

a crime anymore. There has to be something better that we can do when something has been decriminalized. If you can provide evidence of that to a court, there should be something simpler than all the steps we make them go through.

John Jones:
I think you are asking the same question that Assemblyman Thompson did when he started working on the sealing issue. We, as an association, have begun to help streamline that process. To your broader point, as currently written in Assembly Bill 259, a defendant would still have to go through the sealing process. This does not streamline the sealing process as currently written. I have had conversations with Assemblyman McCurdy and we have agreed, as part of the negotiations on this bill, to streamline the sealing process going forward.

Assemblyman Anderson:
The reason I led with that is that there is the opportunity for a compromise here. I am envisioning two separate systems: the regular record sealing and the reformed record sealing that you came up with. That will be inclusive of crimes that are still being charged. Whatever the new process that you all come up with will be the process for those crimes.

As we heard during earlier testimony, Connecticut grants mandatory erasure of convictions for any offense later decriminalized, including marijuana. I think Nevada should do something in line with that. When the courts, the Legislature, or the voters decriminalize an offense, why should anyone have to jump through hoops to get it off their record, as long as it was not pled down? If something was pled down, that should not apply. It has to be an original charge. Do you think there is room for a compromise for a separate system for crimes that have become decriminalized?

John Jones:
I understand the point you are trying to make, and I am willing to negotiate with anyone with respect to streamlining the process. My only concern is that the criminal justice system is confusing enough. I think we will all agree with that. When you start having different systems to do the same thing, it complicates an already complicated system. If we streamline the sealing process for everyone, we can accomplish the same thing, but not for just one specific subgroup of people. We can do it for everyone. With respect to your other point, Bart Pace in Clark County might be able to give you a better answer.

Assemblyman Yeager:
The amendment that you provided looks like it only pertains to record sealing and does not address the vacating of the conviction. Would there be any opposition or any reason why this particular amendment does not also talk about vacating and then sealing versus just sealing?

John Jones:
We are willing to have that conversation going forward. You are right, I did just say petition to seal the records. Just so the Committee knows, we are going to ask you to move the

current subsection 6 in the bill dealing with a vacation of a judgment for prostitution to another area involving NRS 176.515. We are also asking to move that to the sealing statute. Again, so you will know, NRS 176.515 basically deals with vacations of judgments with a new trial granted, a misdemeanor trial, or a jury trial. It is the district attorney's position that these types of things, like a motion to vacate judgment, within NRS 176.515 are inappropriate and would be better in the sealing statute. With respect to your original question, we are willing to have that conversation as well.

Assemblyman Yeager:
You talked a little about vacating a conviction, but if you do not seal the record, someone could still find the information online. I understand that concern, but there is still some value in vacating the conviction even without the sealing of records. For instance, if you are applying for employment, the application might ask if you have been convicted of an offense. If you vacate the conviction, you can truthfully answer the question that you have not been convicted, but there will still be records out there. Is there some value in vacating without sealing the record?

John Jones:
I would argue that sealing would be the better value. There are two things that occur with a sealing. First, by law, the offense is deemed to not have occurred and no conviction technically ever took place. In other words, you can answer the question "have you ever been convicted" with a "no" by statute. It also has the added benefit of making the record of arrest invisible to employers and others.

Assemblyman Yeager:
I do not want to get into record sealing because we will have hearings on that later. Is it also true that, if we just seal the record and do not vacate it, there are various ways the record could be unsealed? If that happens, the conviction is still there at that point.

John Jones:
I will punt that question to Mr. Pace if the Chairman will allow. I do know there is a small subset of folks who can view sealed records, but as a district attorney, I cannot just view them and neither can law enforcement. There is a very small group of people who can view them, and that does not include employers. It would be invisible to almost everyone.

Bart Pace, Chief Deputy District Attorney, Clark County District Attorney's Office:
There have been some very good issues raised this morning and I hope I can help with this issue so everyone understands the bigger picture. *Nevada Revised Statutes* 176.515 is about a new trial. It is about evidence and taking a case and retrying it. Because it is about retrying a criminal case, it is about the person. What we are really dealing with is records. We are not dealing with the person; we are dealing with the records of that person's history. That is what record sealing is all about. It is an arduous process because it is a difficult thing to do and it takes a lot of experience to know how to do it well. When someone is arrested, it creates a record for the arresting agency. That goes to the Central Repository for Nevada Records of Criminal History then the case is referred to a city attorney's office or

a district attorney's office. That record is created in the file. It may contain the offense that is the target of the record sealing, or it may contain multiple offenses with multiple codefendants. The case will then get filed with the justice court or a municipal court where another file will be created containing all of those records. After a preliminary hearing it may get filed with the district court, again, containing multiple offenses and multiple defendants and records. All of this gets shipped to the Central Repository. It is an arduous process because of the proliferation of records that get sent to various agencies throughout the state, as well as to private corporations. To do it effectively, it is arduous. With the district attorney's office, we have been able to reduce our process substantially. We have seen record sealing go down from taking six months to taking less than a month when they know what they—the defendant or the assisting attorney—are doing.

That is the main reason why it should be removed from NRS 176.515 and moved into the record sealing statutes. The purpose is to get all of these records out of the person's history so they can move forward in their attempt to obtain a job and regain a positive status within society. Keeping it in NRS 176.515 only encourages evidentiary issues as opposed to just dealing with the paperwork and the records.

The reference to the court being able to take any additional action that the court deems appropriate under the circumstances could mean anything. No one knows what that means. It does not instruct the defendant on how to get ahold of the paperwork and make the paperwork disappear so they can rely on the statute and say that the arrest and conviction never occurred. That is what record sealing is good at: helping a defendant clean up their record so that anyone who attempts to access it no longer has access. The law allows them to legitimately say that they do not have that arrest on their record or that they have not been arrested in the past. Because of the difficulty of the process, it is necessary for us to work on streamlining the process. In working with Barbara Buckley and many of the Committee members here, we have started to target provisions of records in statutes that we can work on to statutorily memorialize stipulations, reduce the amount of paperwork needed to be submitted with the packets to the court, and things of that nature to streamline the process.

I want to make it clear that the Clark County District Attorney's Office stipulates to the sealing of records in 70 to 80 percent of all cases, including those petitions where the defendant has multiple felony priors. The ultimate goal of the criminal justice system is to see people change their lives. Once they change their lives, we as the district attorney's office want to see them rewarded for that change and for them to be able to move forward.

I want to address section 2 and the revisions to NRS 453.336. As an office, we are opposed to those amendments. We need to remember that the amendment under NRS 453.336, subsection 5, no longer has anything to do with arrests for marijuana. That has to do with convictions for opioids, cocaine, and all of the drugs that are very addictive. I handle drug court for our office, and I am a member of the National Association of Drug Court Professionals. The National Association of Drug Court Professionals is an evidence-based group that focuses on evidence-based treatment and evidence-based recovery models. One of the things that we have learned is that when you decrease the potential punishments,

you decrease the motivation—the stick—to help people deal with addiction. Addiction is a very complex, very challenging thing to deal with. Addicts are in society and we have all of these different beliefs, medical models, addictive personality models and such that tend to simplify the problem of addiction. One thing we have learned through evidence-based treatment is that you cannot decrease the apparent stick or you decrease the motivation of someone staying in the saddle in completing treatment programs such as drug court. The evidence is clear, in the form of recidivism studies, that we can help addicts overcome their addictions, but to do so we need to keep the stick obvious to them, as well as the rewards of successfully completing programs such as drug court. That is why 3363 [NRS 453.3363] treatment of cases is so beneficial. It gives them a big carrot and a big stick, and that helps keep them motivated to do something very difficult, and that is to overcome addiction.

Assemblyman Fumo:
My question is on district attorneys lowering charges. Your office would not do that unless the facts did not support the higher charge, or you did not think you could prove it beyond a reasonable doubt at a jury trial. You would not use it as a negotiating tool to charge someone with a higher crime and then negotiate it lower, right?

John Jones:
We need to have at least probable cause for every charge we file in the Clark County District Attorney's Office. Our general screening policy is that all cases must be at a "beyond a reasonable doubt" level, if at least on paper, we can prove it beyond a reasonable doubt. It has to be supported by the charging document.

Assemblyman Fumo:
If you are reducing charges, must you have a legitimate reason to do so? You do not do that willy-nilly just to negotiate?

John Jones:
Yes. There is a whole litany of things that go into a negotiation: the seriousness of the offense, the defendant's background, and all kinds of things can factor into reducing the charge from the original charging document.

Assemblyman Fumo:
All of those factors would be considered before you did something like that, to reduce a charge?

John Jones:
I would not say all of the factors in every case. There are certain factors that stick out with every defendant.

Assemblyman Fumo:
We talked about "3363 treatment," which was the ultimate dismissal of a case. If you could get this Committee some numbers on that, I would appreciate it. I would like the Committee

to see how many drug-related cases or marijuana cases were filed in Clark County last year. How many of those plea agreements were actually reduced enough that they got a dismissal at the end? How many plea agreements did the Clark County district attorneys negotiate where the language in the plea agreement said the defendant could not argue for 3363 treatment? I would like to see how often that is used.

John Jones:
I am going to get with you after the hearing to make sure I get your questions exactly right so I can try to get the information for you. I will say that there are instances, and I have personally done it as well, where the 3363 treatment was negotiated away. Typically, I do that when it is a much higher-level offense. When someone has a trafficking level of a narcotic, I offer to give them the mandatory-probation category E possession of a controlled substance, but they must agree not to seek a 3363 treatment. That, again, is the negotiation process. The effect of that negotiation is contemplated by the defense and the defendant, as well as the state.

Assemblyman Fumo:
Those are the numbers I would like the Committee to see. My last question is for Mr. Pace. We are talking about record sealing versus vacating a sentence. When we seal a record, we are sealing the entire record. You cannot just seal a marijuana conviction; the entire record is sealed no matter what is in there. In this legislation, we are talking about vacating just one charge. If someone had a marijuana conviction and a higher-level conviction, they could just vacate this one marijuana charge, but the record would still contain the higher-level conviction. Correct?

Bart Pace:
The statute does not require that the whole record be sealed just to seal portions of the record. That is not a requirement in statute.

Assemblyman Fumo:
Would your office stipulate to sealing just one record instead of sealing the entire record?

Bart Pace:
Each petition is taken individually, but yes, we have stipulated to a partial sealing in the past.

Assemblyman Hansen:
As I look at this, the ultimate goal should be public safety. There are legitimate reasons why an employer like myself should have access to a criminal history, even if it is a nonviolent marijuana conviction. In my case, I always do a criminal background check. I have hired literally hundreds of people over the years. A fairly high percentage of them were felons or people with certain background issues. If in fact they have a fairly recent marijuana conviction, the last thing I want to do is put someone like that on a backhoe on a jobsite, or on a heavy piece of equipment that could potentially endanger other people's lives. I think one thing that is being missed in this discussion about record sealing is the high likelihood that an employer could hire someone and find out down the road about his background.

If there was a serious accident and OSHA shows up to go through the investigative processes, the employer could find out that this individual recently had his marijuana conviction record sealed. Perhaps he was, in fact, high at the time the accident occurred. The employer would feel like going to the district attorney's office to find out what he was thinking. The potential employer should be allowed to know those things to protect public safety.

As we discuss this whole thing, and while I am very anxious to help people with employment, I think we are missing one key element and that is that we have a very high responsibility for public safety. When these people are employed using heavy equipment, there is a likelihood that an accident could occur. I always thought the responsibility of the district attorney's office would be public safety. Where do you come down on that?

John Jones:
Those are all very good public policy issues for this body to consider. What we do as a district attorney's office is look at the statute to see if a particular defendant meets the qualifications for sealing under the statute. Right now, I believe it is a two-year period before you can seal a misdemeanor offense. What this bill would do is to close the two-year gap with respect to misdemeanor marijuana offenses, and I believe that is the intent of the Assemblyman. If this body makes that public policy decision, that is your right to do so as legislators. We just follow the law.

Assemblyman Hansen:
I think that is something the Committee should consider. Public safety should be the main focus. I do not want anyone to be denied employment opportunities, but I also do not want an employer unintentionally hiring people who could endanger other people on jobsites.

Chairman Ohrenschall:
If I am understanding Mr. Jones and Mr. Pace correctly, someone who has a misdemeanor conviction for marijuana can follow the current statutory scheme and try to get that conviction sealed. They just have to wait the time period and jump through the hoops. This would, theoretically, get rid of the waiting period and possibly open vacating and sealing of records since this is no longer a criminal matter.

Assemblyman Pickard:
The bulk of my question has been answered. If I may, I would like to focus on the sealing piece. I do not understand criminal sealing very well. My concern, which I share with Assemblyman Hansen, is that the records are there so the public can protect itself and be aware of whom it is dealing with. Are we only talking about first-time, low-level, offenses by someone who has never had a problem with the law? I certainly understand the idea. I made this comment a couple of days ago: I believe in the concept of repentance and that we can change our lives and get back on the proper course. Am I correct that we are talking about only the lowest-level people who really only made one mistake, and we are going to give them a pass on this one?

John Jones:
If you are talking about section 1, there is no limit on the number of convictions that you need before you can avail yourself of the vacation allowed for under section 1 as currently written. In theory, you could have 100 possession of marijuana convictions and seek to seal them all. That is correct.

Assemblyman Fumo:
That is the opposite of what I was saying.

John Jones:
That is what is in statute currently.

Assemblyman Pickard:
We are talking potentially about a habitual offender at a low level can come back and wipe all of that history away. [Mr. Jones nodded his head in the affirmative.]

Chairman Ohrenschall:
We will see if Mr. Pace wants to add anything, but for these low-level offenses the intent is to try to let people move on, and for people who have cleaned up their act to put this behind them. We have an act that is no longer considered against the law.

Assemblyman Pickard:
I support that idea.

Bart Pace:
The first thing is that if someone is truly an addict, they are not going to be able to limit their arrests to one ounce or less of marijuana. They tend to branch off into other offenses just to support the addiction. If it is handled under the record sealing statute, that can all be addressed as looking at the larger picture of the individual.

I have one quick point about the setting aside as opposed to sealing. We do record sealing here in Nevada; we do not destroy the records. They are just sealed from access from the general public. There are some exceptions to the record sealing that allow people to pierce the record-sealing veil and gain access to the records; for example, professional licensing organizations can get access to those. When they get access to those records, they get access to everything, which means they will see that the person was arrested and that the person was convicted. They will also see that they had the conviction set aside years later. They will see that they had the record sealed. They will see the whole picture, so there is not really that many advantages to setting aside as opposed to sealing the record. If you handle it within the record sealing environment, you can see all of the defendant's record and all of their cases. You can look at the big picture on the defendant and see that his arrests stopped at a certain point and he has stayed out of trouble since. Those are the types of cases that we are happy to stipulate to sealing those records and cleaning up their history.

Assemblyman Pickard:
We are forestalling any delay; we are removing any delay. We are saying that these things can be done immediately. I am speaking of your amendment, where this would be a sealing action. It would immediately be available for sealing, so would that not negate the idea that we are looking to see that this person has actually changed and turned his life around?

John Jones:
What we were trying to do is take the intent of Assemblyman McCurdy's bill and put it in the sealing statute. You bring up a great public policy question for this body to deliberate on, but we did not want to change his intent. We just wanted to put it in a place where we thought it would be more appropriate.

Assemblyman Pickard:
Would you then acknowledge that we would be removing any opportunity to see if the person had turned his life around if we sealed it immediately?

John Jones:
As of January 1, 2017, this conduct is legal anyway, so someone could still be engaging in this conduct and we would not know it since the conduct is no longer illegal. To that end, you are removing the distinction between conduct pre-January 1 and conduct post-January 1.

Assemblyman Anderson:
Sealing records and helping people get on with their lives helps public safety when you are talking about low-level things that stop people from getting back to work. I do not want to take away from the points that Assemblyman Hansen made because they are important. I do not want people who are addicts behind heavy machinery causing accidents. But I think a current drug test is a better way of looking at it than an old conviction to determine whether someone is under the influence. That can be the same for alcohol.

I did not take a position on the initiative because of all these federal issues, but I think that Mr. Jones just made the point that we are where we are with the voters weighing in. Federal law does not require us to create our own crimes to enforce theirs. It may prevent us from getting in the way, but that is a different issue for a different day. Whether we criminalize something with our own statutory scheme and require someone to have this on their record in perpetuity is a wholly separate question. I do not think federal law requires that. I hope we can all get past these issues and look at this as a way to get people back to work, to be productive members of society, and not be hung up by their past mistakes. That is what criminal justice reform is all geared to. I do not think anyone is trying to help scumbags get off and not pay for what they have done. It is more to be smart and get people back to work. Listening to this conversation, all of that came to mind. We can get there as a Committee because we are all on the same page. I hope we can look at this as a strategic way to help public safety, since that issue has come up.

Assemblywoman Cohen:
Much like Assemblyman Anderson, I had a problem taking a stand on the marijuana initiative because of federal oversight. People thought I just did not want to take a position and was wimping out. It was exactly like what Assemblyman Hansen said about the federal government and the Attorney General.

There was something Mr. Pace said that I wanted to comment on. You talked about low-level offenders and branching out and the lives of these offenders not being able to just continue to be low-level offenders. I am concerned about that because a lot of people who are addicts, but for the grace of God, go them. I think people who are professionals—doctors, lawyers, or teachers—or who are working people are very lucky in this state that they just happen to not get caught. Mr. Graham has done a lot of work with lawyers and probably has a lot of stories, but he would never tell those stories because of confidentiality. He has lots of stories about lots of prominent attorneys and judges who were involved with drugs for years and years and were addicts. We cannot just say that people were low-level addicts and could stay low-level addicts for years and could commit crimes that are associated with being addicts and then went on to become greater criminals. I just want to make that point.

David Cherry, Communications and Intergovernmental Relations Manager, City of Henderson:
I would like to thank Assemblyman McCurdy for his willingness to meet with me regarding his proposed legislation and for taking the time to speak with our Senior Assistant City Attorney from our criminal division, Marc Schifalacqua. I am not an attorney and I am just here to convey the concerns of our City Attorney's Office.

The primary concern that has been raised about this bill, and it has been mentioned in prior testimony, is that it will bring more individuals before our courts with motions to vacate prior convictions, which would require voluminous staff time and resources. The public defenders, while mentioning this, did acknowledge that this bill would have benefit to a great number of people, which acknowledges that you would see people coming into the court system to seek these motions to vacate. According to our city attorney's interpretation of this bill, there does not seem to be a time limit for when someone could come forward and seek one of these motions.

Under the current statute, I also wanted to note that convictions handed down in misdemeanor possession cases can already be sealed after two years. There has been a lot of discussion about that, but I would also note that there is legislation before this session of the Legislature that would reduce that time period from two years down to one year. That is an option that exists now for folks who can seal after two years to be able to seal after one year. We would be very happy to be part of a conversation about a sealing mechanism or another way that we could reduce the need for our attorneys to go to court to handle these motions, maybe something like the stipulation that the district attorney's office's amendment proposed. We would like to be part of a working group.

Assemblyman Yeager:
It does not sound like you are philosophically opposed to letting these offenders have some mechanism to either vacate or seal. Is it your concern about how it will impact the courts?

David Cherry:
Yes, that is correct. It is a matter of the resources being available and the time that would have to be committed by staff to address this mechanism of having the motion heard in court.

Chairman Ohrenschall:
Is there anyone else in opposition to the measure? [There was no one.] Is there anyone who is neutral on the measure and would like to be heard?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I signed in neutral on this bill, and did not plan to come forward to testify, but as I listened to comments being made, my concern meter started to go up a little. On one hand, I get what Assemblyman McCurdy is trying to do. An activity that may have been illegal yesterday is legal today, and he is trying to provide a means for folks to get that off their record. I understand and support that.

On the other side of the coin, after listening to the testimony and the point made by Assemblyman Yeager about the GHB language and having that stricken from the bill, that would be important. It has been my experience that that drug is not used for personal consumption: it is used to victimize others. It is important that it be removed.

I saw the two sides of the coin between the discussions made by Assemblyman Anderson and Assemblyman Wheeler. On one hand, you may have people who are charged with simple possession of an ounce or less, and then their case is plea bargained to dangerous drugs not introduced into interstate commerce. Those folks could potentially be eligible to have their charges vacated or sealed, depending if the amendment is accepted by the district attorney's office. On the other hand, I think Assemblyman Wheeler raised a great point that you could have people charged with possession with intent to sell and more serious offenses. My understanding is that sometimes up to 90 percent of cases are plea bargained. If we are going to look at the lesser end, we should also look at the higher end. I do not think the intent of this bill is to help folks who are involved in sales or trafficking controlled substances have their records vacated.

Finally, in discussion about streamlining the process for record sealing, my agency supports any efforts on the front end to streamline defendants being able to come in to start that process and have their record sealed. As was mentioned by the gentleman down south, on the back end, it can be very cumbersome and require a lot of research on our part to go through records. There may be cases where there are multiple defendants and one defendant is eligible to have his record sealed, but other members who were involved in that case are not. We have to go through all of those cases and, in some cases, there may still be one of those subjects that is going through the court process. For our folks to go through and find

all of those records and case files—and in some cases the detective's notes, officer's reports, arrest reports, and whatever may be related to that case—and have that information sealed so that it is deemed never to have existed can be quite resource-intensive.

Andres Moses, Staff Attorney, Eighth Judicial District Court:
I want to go on record and thank Assemblyman McCurdy for meeting with me and listening to our concerns regarding section 1, subsection 7, paragraph (a). There was language in there that would require the court to perform services. Traditionally the court does not perform that function: the litigants do. We are happy that he met with us and agreed to make that change. Right now the amendment is conceptual; we have not posted anything yet, but we will get it to the Committee before the work session.

Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts:
I did not sign in initially, but as the discussion went on, this is an area where I worked for a lot of years. One of the difficult things with the legislative process is that if you have an impulse disorder, it is difficult. In 1995, we put many of these statutes in place regarding sentencing. Now it is getting around to where we are ready to redo them. I want to remind the Committee and others that Justice Hardesty is working on a sentencing commission that you will see come through. It should not affect what your decision is here, but just to let you know that there are things coming to revise sentencing and possibly put things in a more appropriate position. It is a work in progress.

The term "expungement" has been used and to my knowledge Nevada does not have that provision. Some other states have it, but not here. As an aside, prior to my departure from the district attorney's office, I held the position that Mr. Pace has and we worked hard to expedite the sealing process.

Chairman Ohrenschall:
The sealing process has come a long way. It needs more work, but it is much better than it was years ago. There is a booklet that tries to help people go through that process.

Is there anyone else who would like to speak in the neutral position on the measure? [There was no one.] Assemblyman McCurdy, Mr. Piro, and Mr. Sullivan please come up to make any closing comments or address any points that were brought up.

Assemblyman McCurdy:
I want to thank everyone for providing such great input in this discussion on allowing individuals to have the opportunity for a second chance. I strongly believe that no one is immune to the trials and tribulations of life. Things happen, and we should continue to be a body that promotes the ability to have a second chance and to be a positive contributor to our society.

I want to speak to Assemblyman Hansen's statement about individuals and their dealings regarding their past history of low-level drug related offenses. I also agree with Assemblyman Anderson saying that it is a public safety concern when we do not allow them

to have the ability to move forward and be a positive contributor. Everything will be taken into consideration, even the record-sealing language. I know that it is a rigorous process to go through, but I also agree that we have to do something to allow for those individuals to go through the process of vacating much faster.

Chairman Ohrenschall:
We appreciate your efforts to bring us into compliance with the will of the voters and also in trying to provide alternatives to incarceration.

John Piro:
I spent about eight hours in that room during the record sealing. Mr. Pace was the other man in the room, along with Judge Barker. Thank you, Mr. Pace, for helping to make a better process, even though we have more work to do.

Sean Sullivan:
I, too, want to thank this Committee and Assemblyman McCurdy for listening and being part of the vetting process. I agree with Assemblyman Anderson and his point about promoting public safety because that is what we all want at the end of the day. We want people to be gainfully employed and assimilate back into society. I continue to lend my services to all of the stakeholders in the room to continue to vet Assembly Bill 259.

Assemblyman McCurdy:
I was at the record-sealing event also and I learned a lot. I got a chance to tag along with Assemblyman Anderson.

[Written testimony in support of Assembly Bill 259, submitted by Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada, dated March 14, 2017, is made part of the record (Exhibit F).]

Chairman Ohrenschall:
I will close the hearing on Assembly Bill 259. I will open it up for public comment, both here in Carson City and down in Las Vegas.

Tonja Brown, Private Citizen, Carson City, Nevada:
I want to briefly touch on Assembly Bill 251 because of the discussion on the brain maturing. I want to point you to the Advisory Commission on the Administration of Justice and Dr. James Austin's research on that. You will see some of the statistics on this that show the male brain does not mature until around the age of 25. Keep that in mind and refer to that when you are dealing with juveniles.

Chairman Ohrenschall:
I do not see anyone else for public comment. We will close public comment. The meeting is adjourned [at 10:37 a.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman James Ohrenschall, Chairman

DATE:

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is the Work Session Document for Assembly Bill 23, dated March 9, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit D is the Work Session Document for Assembly Bill 26, dated March 9, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit E is a proposed amendment to Assembly Bill 259 presented by John T. Jones, Jr., representing Nevada District Attorneys Association.

Exhibit F is written testimony in support of Assembly Bill 259, submitted by Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada, dated March 14, 2017.