

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session  
May 11, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 3:37 p.m. on Monday, May 11, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Greg Brower, Chair  
Senator Becky Harris, Vice Chair  
Senator Michael Roberson  
Senator Scott Hammond  
Senator Ruben J. Kihuen  
Senator Aaron D. Ford

**COMMITTEE MEMBERS ABSENT:**

Senator Tick Segerblom (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Elliot T. Anderson, Assembly District No. 15  
Assemblyman John Hambrick, Assembly District No. 2  
Assemblyman Michael C. Sprinkle, Assembly District No. 30

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Nick Anthony, Counsel  
Cassandra Grieve, Committee Secretary

**OTHERS PRESENT:**

Kerrie Kramer, The Cupcake Girls

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John Wagner, Independent American Party  
John T. Jones, Jr., Nevada District Attorneys Association  
Sean B. Sullivan, Office of the Public Defender, Washoe County  
Steve Yeager, Office of the Public Defender, Clark County  
Jennifer Lazovich, Focus Property Group; Olympia Companies  
Angela Rock, Olympia Companies  
Garrett Gordon, Community Associations Institute  
Pamela Scott, The Howard Hughes Corporation  
Jonathan Friedrich, Nevada Homeowner Alliance  
Robert Frank, Citizen Task Force for Voter Rights  
James Dold, The Campaign for the Fair Sentencing of Youth  
Xavier McElrath-Bey, The Campaign for the Fair Sentencing of Youth  
Kristina Wildeveld  
Megan Hoffman  
Vanessa Spinazola, American Civil Liberties Union of Nevada  
Regan Comis, M+R Strategic Services  
Jim Zeitler  
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General  
Parker Stremmel, Dignity Health St. Rose Dominican Hospitals  
Marlene Lockard, Nevada Women's Lobby  
Eric Spratley, Sheriff's Office, Washoe County  
A.J. Delap, Las Vegas Metropolitan Police Department  
Bob Roshak, Nevada Sheriffs' and Chiefs' Association

**Chair Brower:**

I will open the work session on Assembly Bill (A.B.) 50.

**ASSEMBLY BILL 50 (1st Reprint)**: Revises provisions concerning the solicitation of contributions. (BDR 7-447)

**Patrick Guinan (Policy Analyst):**

Assembly Bill 50, as sponsored by the Office of the Secretary of State, was heard by this Committee on April 30. I will read from the work session document (Exhibit C).

Several parties, in consultation with the Secretary of State's Office, have vetted Proposed Amendment 6951.

**Chair Brower:**

The proposed amendment intends to clean up some provisions and ensure the bill does not adversely affect Nevada's charitable organizations.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 50.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on A.B. 67.

**ASSEMBLY BILL 67 (1st Reprint):** Makes various changes relating to driving, operating or being in actual physical control of a vehicle or vessel while under the influence of alcohol or a controlled substance or engaging in other prohibited conduct. (BDR 4-151)

**Mr. Guinan:**

Assembly Bill 67, as sponsored by the Office of the Attorney General, was heard by this Committee on May 4. I will read from the work session document ([Exhibit D](#)).

Brett Kandt of the Attorney General's Office provides the proposed amendment.

**Chair Brower:**

The proposed amendment defines physical control for the purpose of a DUI charge. The sponsor of the Assembly Floor amendment supports Mr. Kandt's proposed amendment.

**Senator Ford:**

What about when a person is in a car, asleep in the driver's seat, with the heating or air conditioning on?

**Chair Brower:**

If a person is in the driver's seat, he or she may be deemed to be in physical control. In order to not be in physical control, the person cannot be in the driver's seat, the engine cannot be running and so on.

SENATOR HAMMOND MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 67.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on A.B. 225.

**ASSEMBLY BILL 225 (1st Reprint)**: Revises provisions governing programs for reentry of offenders and parolees into the community. (BDR 16-45)

**Mr. Guinan:**

Assembly Bill 225, as sponsored by Assemblywoman Dina Neal, was heard by this Committee on May 8. I will read from the work session document ([Exhibit E](#)).

There is an amendment proposed by Assemblywoman Neal.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 225.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on A.B. 47, A.B. 183, A.B. 195 and A.B. 212.

**ASSEMBLY BILL 47 (1st Reprint)**: Provides for the establishment within the Central Repository for Nevada Records of Criminal History of a service to conduct a name-based search of records of criminal history. (BDR 14-294)

**ASSEMBLY BILL 183 (1st Reprint)**: Revises provisions related to real property. (BDR 10-621)

**ASSEMBLY BILL 195 (2nd Reprint)**: Revises provisions governing deficiency judgments. (BDR 3-865)

**ASSEMBLY BILL 212 (1st Reprint)**: Increases the statute of limitations for sexual assault. (BDR 14-1062)

**Mr. Guinan:**

I have work session documents for A.B. 47 (Exhibit F), A.B. 183 (Exhibit G), A.B. 195 (Exhibit H) and A.B. 212 (Exhibit I) summarizing the bills. The hearings for these bills did not have opposition; none of the bills have amendments.

SENATOR HARRIS MOVED TO DO PASS A.B. 47, A.B. 183, A.B. 195 AND A.B. 212.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on A.B. 193.

**ASSEMBLY BILL 193 (1st Reprint)**: Makes various changes relating to criminal procedure. (BDR 14-911)

**Mr. Guinan:**

Assembly Bill 193, as sponsored by the Assembly Committee on Judiciary, was heard by this Committee on May 6. I will read from the work session document (Exhibit J).

SENATOR HARRIS MOVED TO DO PASS A.B. 193.

SENATOR HAMMOND SECONDED THE MOTION.

**Senator Ford:**

I have been in discussion with the proponents of A.B. 193, attempting to craft an amendment that allays my concerns about ensuring the credibility of the hearsay being offered and admitted. Absent those types of protections, I cannot support this bill in its current form.

THE MOTION CARRIED. (SENATORS FORD AND KIHUEN VOTED NO.)

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**Chair Brower:**

We will open the hearing on A.B. 108.

**ASSEMBLY BILL 108 (1st Reprint)**: Revises provisions governing victims of sex trafficking. (BDR 14-750)

**Assemblyman Elliot T. Anderson (Assembly District No. 15):**

Assembly Bill 108 is another step toward helping victims of sex trafficking-related crimes. It is another step toward helping victims live healthy and productive lives.

In 2011, Assemblyman John Hambrick sponsored A.B. No. 6 of the 76th Session, which allowed courts to grant motions to vacate judgments if a defendant's conviction of engaging in or soliciting prostitution was the result of having been the victim of sex trafficking or involuntary servitude.

Such victims often end up with criminal records that affect their future prospects, including employment opportunities. Assembly Bill No. 6 of the 76th Session provided victims of trafficking a chance at new beginnings.

Assembly Bill 108 builds on Assemblyman Hambrick's earlier legislation by allowing a court to grant a motion to vacate a judgment if the defendant was convicted of trespassing, loitering in a gaming area or violating a county, city or town ordinance prohibiting loitering for the purpose of solicitation or prostitution. This motion will only be granted if the defendant's participation in

the offense was the result of having been a victim of sex trafficking or involuntary servitude.

Many convictions are a result of plea bargain arrangements in which defendants plead guilty to crimes of a lesser penalty to avoid the risk of going to trial and receiving harsher sentences. There are many cases where a victim of sex trafficking or involuntary servitude agrees to accept a trespassing or loitering conviction instead of risking conviction for a more serious crime.

Often, casino staff who are suspicious of prostitution in the area will place suspects under citizen's arrest, charging them with trespassing rather than trying to prove a case for soliciting, which can be protracted. While A.B. 108 may be a small change to statute, it will have a large impact on some of the most vulnerable members of our society.

**Chair Brower:**

In an effort to undo a prior conviction, how will one prove he or she was a victim of trafficking or involuntary servitude?

**Assemblyman Anderson:**

Victims of sex trafficking will need to apply to the court and, similar to other types of cases, prove they have been in that situation. It is under the discretion of the court to accept the proof. Assembly Bill 108 does not create a new procedure; it builds upon existing law.

**Chair Brower:**

Will the person—who has already been convicted of the crimes at this point—simply file a motion or affidavit attesting to the fact that the prior convictions fit into one of the two categories in section 1, subsection 5, paragraph (b)?

**Assemblyman Anderson:**

Correct. Evidence needs to be presented to the court. As for what kind of evidence is required, I cannot say, but there would have to be some showing that the person is a victim of sex trafficking.

**Kerrie Kramer (The Cupcake Girls):**

The Cupcake Girls is a nonprofit organization geared solely toward the support and rehabilitation of individuals in all facets of the adult entertainment and sex

industry. The organization respectfully and discreetly provides individuals with resources and support tailored to fit the needs of the individual by building personal relationships. These individuals include those who have been victims of sex trafficking.

The Cupcake Girls was founded by Joy Hoover and facilitates connections between community resources and individuals working in the industry. We have provided 1,076 meetings for peer support; 142 professional sessions with doctors, dentists and lawyers; 83 instances of mental health assistance; and 55 resume-building and career-development sessions. These activities are accomplished through donations and with trained volunteers and community partners.

We support A.B. 108 because our major focus is helping victims of trafficking become whole again. The most important aspect of becoming whole again is gaining employment. The biggest employment barrier faced by these individuals is the multiple trespassing convictions that must be divulged in the application process.

Often defendants plead down from prostitution and solicitation to lesser charges. Despite this, when an employer sees the multiple trespassing convictions, it usually leads to the conclusion of prostitution or solicitation. That situation makes gainful employment outside the industry very difficult.

Assembly Bill 108 will give all victims of sex trafficking the ability to get out from under the life of convictions they so desperately want to leave behind.

**John Wagner (Independent American Party):**

We support A.B. 108. These individuals have already been victims once. If we can clear this issue up, they can get on with their lives. This is a good step forward.

**John T. Jones, Jr. (Nevada District Attorneys Association):**

We support A.B. 108.

**Chair Brower:**

I am not sure a person seeking to take advantage of this law is called a defendant when he or she makes a motion under section 1, subsection 5, paragraph (c). What would be the process procedurally?

**Mr. Jones:**

*Nevada Revised Statute* (NRS) 176.515 is a relatively new statute, so I consulted with my office on how many of these type motions had been filed. I was informed not many had been filed, although those filed were from defendants asking judges to set aside their convictions because they were victims of sex trafficking.

**Chair Brower:**

Was the motion made to set aside the conviction or the judgment within the same case in which the person was convicted?

**Mr. Jones:**

Yes. It is not a new case to file that motion. The motion is filed within the original case. Therefore, if there are multiple convictions—which is often the situation—there is one motion within each case.

**Chair Brower:**

What if a person has a string of convictions? A person has escaped the industry and wants a different job, but does not want his or her criminal history available to prospective employers. This person wants to have his or her prior judgment or judgments vacated. Is this person a defendant or a petitioner? How does A.B. 108 handle this situation?

**Mr. Jones:**

If individuals have prior criminal cases, they are defendants. Once their cases are closed, they are still defendants from those cases.

**Chair Brower:**

I am not sure they are still called defendants at that point. For lack of a better term, they are convicts. They are no longer defending a case; they are convicted misdemeanor felons.

**Mr. Jones:**

Correct.

**Assemblyman Anderson:**

Section 1, subsection 1 contemplates granting a new trial and vacating the judgment after the trial. It is written broadly enough where a motion could be filed after a judgment has been entered.

**Chair Brower:**

The intent of A.B. 108 is understandable. The Committee wants to make sure it can process this bill. I need to look at the language more closely and speak with Legislative Counsel.

**Sean B. Sullivan (Office of the Public Defender, Washoe County):**

We support A.B. 108. We want to encourage our clients to get a fresh start. We are happy to help clarify the bill's language.

**Steve Yeager (Office of the Public Defender, Clark County):**

We support A.B. 108. We are also willing to help clarify language in the bill.

**Chair Brower:**

Mr. Sullivan, how do you see this process working from the public defender's point of view? I understand the process is already in statute and A.B. 108 merely adds new offenses. Could the bill apply to a defendant in a pending criminal case? Could it also apply to someone with past cases and a record?

**Mr. Sullivan:**

It could encompass both scenarios.

**Chair Brower:**

We will close the hearing on A.B. 108 and open the hearing on A.B. 192.

**ASSEMBLY BILL 192 (1st Reprint):** Makes various changes relating to common-interest communities. (BDR 10-661)

**Jennifer Lazovich (Focus Property Group; Olympia Companies):**

I represent companies that are developers of large master planned communities in southern Nevada. Those master planned communities are Southern Highlands, Mountain's Edge and Sky Canyon.

Assembly Bill 192, section 1, subsection 1, paragraphs (a) and (b), allows communities with 1,000 units or more to have a declarant remain on the association board by appointing a majority of the members until 90 percent of units are sold. Assembly Bill 192 also brings a homeowner onto the board sooner, at 15 percent of units sold.

Southern Highlands has an annual operating budget of about \$8 million. The declarant has appointed a member with a background in accounting, a member with a background in urban planning and a construction manager. The express purpose of appointing members with specific expertise is to guide the final development and completion of the community as set forth in the development agreement. About \$35 million worth of improvements are still to be completed within the Southern Highlands project.

In Mountain's Edge, the developers and Clark County have a development agreement where substantial improvements are awaiting development, including parks, fire stations and a police substation.

Development agreements for these large master planned communities call for enormous amounts of infrastructure to be put in before the community is considered complete. That consideration of completeness comes with the construction of homes, too, which is why we ask for this change to NRS 116.

Allowing the declarant, or developer in this case, to remain on the board until 90 percent of the units are completed also allows for the additional time to finish many of the requirements found in the development agreements. Those agreements address underground utilities, parks, trails, etc.

Having the developer, or declarant, to stay on the board until 90 percent of completion allows for a smoother transition to a homeowner board. If the developer stays on longer, it is important to bring homeowners onto the board sooner. In the cases of large master planned communities, the bill balances this change by lowering the percentage at which homeowners can be on the board from 25 percent to 15 percent.

**Angela Rock (Olympia Companies):**

We support A.B. 192 because it more closely follows and is consistent with the Uniform Common Interest Ownership Act, upon which NRS 116 was adopted and originally modeled.

Assembly Bill 192 recognizes the difference between large, complex master planned communities and smaller homeowners' associations. The bill allows transition at a number better reflecting the completeness of a master planned community.

In a large, complex master planned community, if 25 percent of the homes remain to be built, that community is still considered under construction. Southern Highlands is a community still under construction because it has \$35 million worth of infrastructure outstanding. In comparison, a smaller community is essentially complete if it has a small number of homes left to be built.

**Garrett Gordon (Community Associations Institute):**

Community Associations Institute consists of homeowners' association professionals, homeowners' board members and homeowners. We support A.B. 192.

It is good the bill only applies to communities with over 1,000 units. These larger associations are well managed, employ professionals and have minimal complaints.

The makeup of the board is a balancing act. With A.B. 192, the developer stays on the board longer, but the homeowner can get on the board earlier. Making this change allows the homeowner on the board earlier to provide input.

**Pamela Scott (The Howard Hughes Corporation):**

We support A.B. 192.

**Senator Ford:**

Ms. Lazovich, what has prompted a need for this legislation?

**Ms. Lazovich:**

Assembly Bill 192 does not correct a problem but is proactive legislation.

For example, in Southern Highlands, approximately 65 percent of the units have been sold. Although reaching the 75 percent threshold remains some distance away, we believe the community will still be under construction even at 75 percent complete. At 75 percent complete, the community will still have a substantial dollar amount at stake in terms of improvements yet to be completed.

**Senator Ford:**

What is your concern by leaving the law as is? Do you think you will be unable to continue to develop the community? I am not sure there is a need to change the law.

**Ms. Lazovich:**

Southern Highlands has put a strong emphasis on detail in the exterior landscaping not only in the parks but also in the trails. This has been done with great intent. The developers want people to know when they have entered the Southern Highlands planned community.

A fear could be that if we transitioned off at 75 percent—believing the community to still be under construction at 75 percent—a board controlled by homeowners may decide the landscaping is not in the best interest of the community and tear it out.

Assembly Bill 192 is a way to continue the consistency started when the community development began. As we look forward to keeping that consistency in place, things could change if the developer does not remain on the board.

**Senator Ford:**

It is more appropriate to have homeowners take control of the homeowners' association sooner rather than later. I understand the 15 percent and the offer of homeowners coming onto the board earlier. My question remains: why is it inappropriate for homeowners to change something the developer wants? Why is it not acceptable for homeowners to decide to stop a particular renovation or construction? Why should homeowners' input be lessened by waiting for the community to reach 90 percent ownership?

**Ms. Rock:**

Homeowner involvement is not lessened with this bill. The way NRS 116 is written, at every board meeting, homeowners can address concerns before the meeting on agenda items and at the end of the meeting during open comment. If homeowners have a true concern, the Real Estate Division, under the Department of Business and Industry, has numerous programs available to address their issues.

It is generally understood that when a community is still under construction, the developer maintains financial responsibility. Public offering statements are still

being generated which have a litany of markers that have to be met with financial reporting, financial statements and financial viability of the community.

When a developer is still selling to meet that next marker of 2,500 homes and still producing public offering statements, it is fair for the developer to maintain an element of responsibility because it does indeed have a responsibility. The developer is responsible for the financial health of the community. The developer must continue to have authority on the board because the community is still under construction.

**Jonathan Friedrich (Nevada Homeowner Alliance):**

Nevada law clearly states when 75 percent of the community is built out and sold, the community transitions to a homeowners' association.

At the time of transition, the developer is no longer in charge of the management of the community unless the new homeowners' association chooses to hire the developer back. Developers and homeowners' association industry professionals know this is the law. With these communities nearing completion, now the developers want the law changed.

Southern Highlands is close to being 75 percent built out. Southern Highlands holds a profitable management contract with the community in addition to being a developer in the Las Vegas area.

When a developer turns the community over to the homeowners' association, amenities such as parks and clubhouses must be completed and reserve funds must be in the bank and turned over to the new homeowners' board. The transition process is a costly step.

In the case of Southern Highlands, it seems like the developer is not willing to give up its contract and turn over control to the community. The developer is asking to rewrite the rulebook in the middle of the game.

Infrastructure can be completed in the early stages of the development. By increasing the percentage of community completion from 75 percent to 90 percent, a developer can hang on to a community for years and possibly forever. Developers tried to change this law in the last Session. The Real Estate Division opposed the bill, and it failed.

This action is nothing short of pure greed at the expense of homeowners. Homeowners were promised one thing in the offering statement, and this bill will change that offering.

**Chair Brower:**

How do you see this bill adversely affecting homeowners?

**Mr. Friedrich:**

It is bait and switch. The homeowner was promised one thing, and now this bill delivers something else.

**Chair Brower:**

To the homeowner's detriment?

**Mr. Friedrich:**

Possibly. Southern Highlands is not turning over all the promised amenities. With A.B. 192, developers can stretch out those promised amenities for more years.

**Chair Brower:**

What practical negative impact will that have on a homeowner?

**Mr. Friedrich:**

There will be no bidding on the management contract. If A.B. 238 goes forward, bids will be required, so the contract for the management of the community might be cheaper with an outside contractor versus the Southern Highlands developer.

**ASSEMBLY BILL 238 (2nd Reprint)**: Makes various changes to provisions relating to a homeowners' association. (BDR 10-808)

**Robert Frank (Citizen Task Force for Voter Rights):**

There is nothing broken, so nothing needs to be fixed. For all this time, 75 percent has worked well for over 3,000 homeowners' associations. The law is fair to homeowners now.

As a member of the Commission for Common-Interest Communities and Condominium Hotels, I often see rules and regulations proposed where the association or the homeowner is not harmed, but the rule is of no benefit to the

community either. Often, developers benefit greatly and communities do not. Assembly Bill 192 seems self-serving for one particular developer.

The bill greatly benefits a developer that subcontracts work to its own company or to companies in which it has a vested interest. The bill is a benefit to developers because they do not have to have reserve funds at the ready, nor do they need to finish the amenities they promised by the 75 percent mark.

**Chair Brower:**

We will close the hearing on A.B. 192 and open the hearing on A.B. 267.

**ASSEMBLY BILL 267 (1st Reprint):** Revises provisions concerning the sentencing and parole of persons convicted as an adult for a crime committed when the person was less than 18 years of age. (BDR 14-641)

**Assemblyman John Hambrick (Assembly District No. 2):**

Every day, minors are charged with serious crimes. After minors are charged, they may wait for a trial date for perhaps a year or 2 years. In that time, the defendant may progress from a minor into adult. This causes problems with regard to sentencing. Assembly Bill 267 addresses this issue.

**James Dold (the Campaign for the Fair Sentencing of Youth):**

The Campaign for the Fair Sentencing of Youth is a coalition of individuals who come together to work for more fair and age-appropriate sentencing standards for youths convicted of serious crimes.

Section 1 of A.B. 267 states the requirements judges must consider when sentencing juveniles in an adult court, including the diminished culpability of juveniles relative to adults. This language comes directly from the U.S. Supreme Court case *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

Section 2 prohibits the imposition of a life without parole sentence on a person who was under the age of 18 when he or she committed the offense.

Section 3 deals with the parole eligibility of those individuals, setting parole eligibility at 15 years for a nonhomicide offense and 20 years for a homicide offense when there was only one victim.

Section 5 makes these provisions retroactive so they are applicable to individuals currently serving sentences of life without parole if the specifics of this legislation are met.

Assembly Bill 267 is not a “get out of jail free card.” It is important to note that judges retain the ability to impose life sentences for both homicide and nonhomicide offenses.

This bill gives the State Board of Parole Commissioners an ability to review cases to see if these youths have been rehabilitated—if they have changed—in the meaning and the spirit of several recent U.S. Supreme Court cases.

We have worked with the Nevada District Attorneys Association and the Parole Board to ensure an appropriate balance in maintaining public safety and recognizing we are dealing with juveniles. No child should be sentenced to die in prison.

Back in the 1990s, there was a juvenile crime wave. Criminologists from across the Country theorized this juvenile crime wave was going to continue. This opinion resulted in the superpredator theory, which held that a new generation of juvenile delinquents was more violent and remorseless than ever before. These juveniles were characterized as being jobless, fatherless and Godless.

The superpredator theory led to a host of states passing laws to make it easier to transfer juveniles into the adult criminal justice system and place adult penalties on juveniles, including extreme sentences like the death penalty and life without parole sentences.

In 2005, the U.S. Supreme Court weighed in on extreme sentences being applied to minors. The case of *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005), struck down the death penalty for juveniles. In an opinion by Justice Anthony Kennedy, the Court noted that behavioral development science shows the juvenile brain has fundamental differences between it and an adult brain. Science shows that the part of the brain in charge of decision making, the prefrontal cortex, is not fully developed in juveniles and, as a result, children rely on the amygdala when thinking, making them more impetuous and more susceptible to peer pressure and making rash decisions.

The Court also held that the international consensus is against imposing the death penalty on juveniles. Justice Kennedy noted only a handful of nations sentence children to death: Iraq, Somalia, Saudi Arabia—and the United States.

The final item Justice Kennedy wrote about was the great difficulty in distinguishing between the irredeemable youths who might not be rehabilitated over time and the overwhelming majority of children who could be rehabilitated over time. Justice Kennedy cited these crime statistics: a 50 percent decline in criminal activity by the time a youth reaches 22, and an 85 percent decline in criminal activity by the time a youth reaches the age of 28. We call this trend “aging out of criminal behavior.” This rationale applies across the board to juveniles convicted of committing serious offenses.

In *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010), the Court took up the issue of life without parole sentences for nonhomicide offenses. Here the Court again relied on the already established reasoning from *Roper v. Simmons* which struck down life without parole sentences for nonhomicide offenses. Here again Justice Kennedy highlighted that life without parole sentences are akin to the death penalty for children because children are sent to cells where they will never have the opportunity to leave prison no matter how much they change or how much they are rehabilitated.

In looking at the rehabilitation models of juveniles who commit serious crimes and the fact that so many children change over time, it is difficult to distinguish between juvenile offenders who cannot be rehabilitated and those who committed the crime as a part of transient youth.

In the 2012 *Miller v. Alabama*, the Court takes on the issue of mandatory life without parole sentences. In this case, the Court strikes down mandatory life without parole sentences for juveniles convicted of homicide offenses, invalidating 28 statutes across the Country. The decision requires judges to consider certain mitigating factors of youth, including the diminished culpability of juveniles relative to adults, any time a child faces a potential life sentence. This is stated in section 1 of A.B. 267.

Since the *Miller v. Alabama* decision, several states have ruled the Court’s decision should be applied retroactively. Of the 14 state supreme courts that have taken this issue up, 10 states have held the law should be applied

retroactively. Two states have upheld discretionary life without parole sentences.

In response to the U.S. Supreme Court cases and the emerging juvenile brain behavioral developmental science, several states have been proactive in removing the possibility of sentencing a child to life without parole. These states include: Texas, Wyoming, Montana, West Virginia, Kansas, Kentucky, Massachusetts, Hawaii, Vermont and Delaware. I mention these states specifically to show the breadth of political and geographical diversity of the states that have enacted these reforms. The reforms in these states have been on a bipartisan basis, looking at the issue through the lens of human rights. The U.S. is the only country in the world known to still use the sentence of life without parole on children in violation of several international treaties.

The American Bar Association has been proactive in this regard by passing Resolution 107C in February. Resolution 107C calls on all states and the federal government to eliminate life without parole as a sentencing option for children, holding that children should have a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

Our organization has seen great bipartisan support for this issue. We have worked with former Speaker of the House Newt Gingrich and former President Jimmy Carter on this issue.

**Xavier McElrath-Bey (The Campaign for the Fair Sentencing of Youth):**

I am the cofounder of the Incarcerated Children's Advocacy Network which is sponsored by the Campaign for the Fair Sentencing of Youth. I coordinate a national network of formerly incarcerated individuals who were convicted of murder as children. This work is important to me because when I was 13 years old, I was arrested, charged and convicted to serve a 25-year sentence in prison for my involvement in a first-degree murder.

When convicted, I weighed about 112 pounds and was 5 feet 2 inches tall. I was very much still a child, but the only thing the court had was a rap sheet showing I had a record of 19 arrests and 17 convictions. I was viewed by the juvenile court as incorrigible, someone beyond repair and irredeemable.

My probation officer fought hard to have me transferred into the adult court system. When I entered the adult court system, something strange happened. I

met a public defender who looked at who I was on the inside. She asked me questions that were not typical of my previous experiences with public defenders. She recognized I was still a child. She understood I came from a background of extreme circumstances—of abuse and neglect. She saw I had grown up in foster care and group homes and that I had been a gunshot victim at 11 years old. She understood I had seen much violence in my community.

Prior to that point, adults I met did not look into my life and what I experienced growing up but looked at my behavior with the result being punitive. My public defender convinced the court I was still a child; and with A.B. 267, we want to convince the Committee these juveniles are still children.

When my public defender convinced the judge I was a child, instead of giving me a 60-year sentence as recommended by the state, the judge gave me a 25-year sentence; I could be free in my mid-twenties. In some way, these people believed I had a potential for change—and I did. During my incarceration, I grew up. I matured. I became remorseful and thoughtful of the future and developed the hope that someday I might live a normal life.

Today, I live my life as an eternal apology to the victim and his family, to those in my community I harmed and to those who never envisioned I might become a better person. Because of the grace of God, support from people in my life and the opportunities given to me, I was released and given the chance to demonstrate I was better than my worst act. We want to see these individuals have the same opportunity.

I want the Committee to allow juveniles the same opportunity I had to someday be released, live normal lives and prove they are better than their worst acts. While incarcerated, I earned an associate in arts degree in social work and education, and a bachelor of arts degree in social science. In the past 13 years, I have worked in gang intervention and violence prevention. I was a clinical research interviewer at Northwestern University, researching the mental needs and outcomes of former incarcerated youths.

I believe in my heart that juveniles in prison now for these crimes have the capacity to change. We are not irredeemable. We are not beyond repair. I want you give them the chance I had.

**Chair Brower:**

How old are you now, and at what age were you when last incarcerated?

**Mr. McElrath-Bey:**

I am 39 years old. I went into prison when I was 13 years old. I was released at 27 years old.

When examining age-appropriate sentencing schemes, we emphasize the importance of having a meaningful opportunity for release and giving that hope and light at the end of the tunnel. We are not saying open the door and let them all out, but give these juveniles something to which they can aspire. I guarantee the majority of them, if not all, will aspire toward something better.

**Chair Brower:**

This strikes a chord with me because I have prosecuted a juvenile in the federal system as an adult. He pleaded guilty to conspiracy to commit murder and the judge sentenced him to 20 years, which in the federal system means 20 years.

This juvenile-to-adult series of laws we have is an interesting part of our jurisprudence. I appreciate you being here.

**Kristina Wildeveld:**

I am a private criminal defense attorney, and I support A.B. 267. I have submitted my testimony ([Exhibit K](#)).

**Megan Hoffman:**

I am the Chief of the Non-Capital Habeas Unit with the Office of the Federal Public Defender, District of Nevada, but I testify today on behalf of myself. I currently represent several defendants who have been sentenced to life without parole in Nevada as juveniles. I support A.B. 267.

**Chair Brower:**

Do you represent persons who committed crimes as children and were convicted as adults in the federal court system?

**Ms. Hoffman:**

Yes. I represent individuals convicted in Nevada State courts who are appealing those State convictions in federal habeas proceedings.

**Vanessa Spinazola (American Civil Liberties Union of Nevada):**

We support A.B. 267. Dr. Bridget Walsh was here earlier but had to leave. She is a tenured professor in human and family development at the University of Nevada, Reno. She submitted a paper discussing the prefrontal cortex ([Exhibit L](#)).

**Regan Comis (M + R Strategic Services):**

We support A.B. 267. The Parole Board had concerns initially about A.B. 267, but those concerns were addressed. The Parole Board is neutral on the bill.

**Mr. Jones:**

The Nevada District Attorneys Association supports A.B. 267. Ms. Wildeveld said that juveniles at any age are subject to adult prosecution for murder. While this was true in the past, in 2013, A.B. No. 202 of the 77th Session passed into law, making the charge a direct file or automatic adult offense for any child over the age of 16 years old.

Any child between 13 years old and 15 years old is subject to a certification procedure. A certification procedure is when a juvenile court judge determines whether a child should remain in the juvenile system or be sent to the adult system based on the nature and seriousness of the offense, the child's prior record and any subjective factors.

**Mr. Sullivan:**

The Washoe County Office of the Public Defender supports A.B. 267.

**Mr. Yeager:**

The Clark County Office of the Public Defender supports A.B. 267.

**Jim Zeitler:**

I am neutral on A.B. 267. If passed, is the bill retroactive?

**Chair Brower:**

No, section 5 states it only relates to offenses committed on or after October 1, 2015, or for convictions on or after October 1, 2015, depending on the specific section of the bill.

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**Mr. Dold:**

All the provisions apply prospectively except section 3 that applies retroactively. The bill impacts individuals already sentenced to life without parole.

**Chair Brower:**

Thank you for the clarification. We close A.B. 267 and open A.B. 214.

**ASSEMBLY BILL 214 (1st Reprint)**: Makes various changes related to public safety. (BDR 16-568)

**Assemblyman Michael C. Sprinkle (Assembly District No. 30):**

Assembly Bill 214, section 1, allows a limited portion of money from the Contingency Account for Victims of Human Trafficking to be used for fundraising for the direct benefit of the Contingency Account.

Section 2 allows the Director of the Department of Health and Human Services to allocate funds from the account if, at his or her discretion, there is an emergent need for the funds.

Immediately after this account was established in the 77th Session, we realized time is of the essence when attempting to protect victims. This bill allows the Director to allocate those funds. Assembly Bill 214 does not supersede the need for the Director to justify the funds, nor does it challenge the reporting mechanisms established to ensure the appropriate use of funds.

Section 3 increases the penalties on a person convicted for soliciting a child for prostitution, making the first offense a Category E felony, the second offense a Category D felony and the third or subsequent offense a Category C felony without the possibility of probation or suspension of the sentence.

We submit a proposed amendment ([Exhibit M](#)).

**Brett Kandt (Special Assistant Attorney General, Office of the Attorney General):**

The Office of the Attorney General worked on section 3 of A.B. 214 after consulting with stakeholders to ascertain the extent of the problem of sex trafficking in Nevada.

The laws regarding the solicitation of a child for sex have advanced; however, the demand side of the equation remains a large part of the sex trafficking problem. Prior to 2009, there was no differentiation between soliciting a minor for sex and soliciting an adult for sex—both offenses were misdemeanors. In 2009, the Legislature recognized that soliciting a child should carry a harsher penalty and the charge was changed to a Category E felony.

As we continue to address the demand side of the problem of sex trafficking in Nevada, the Attorney General recognizes there should be an appropriate escalating penalty for those who continue to repeatedly solicit children for sex. This is addressed in section 3 of A.B. 214.

A second offense is a Category D felony and will allow probation. A third or subsequent offense is a Category C felony and does not allow probation. This sends the message that sex trafficking and seeking to have sex with children in Nevada is unacceptable.

**Parker Stremmel (Dignity Health St. Rose Dominican Hospitals):**

We support A.B. 214, especially the part regarding the Contingency Account. This change will allow for more flexibility.

**Marlene Lockard (Nevada Women's Lobby):**

We support A.B. 214.

**Mr. Jones:**

The Nevada District Attorneys Association supports A.B. 214.

**Eric Spratley (Sheriff's Office, Washoe County):**

We support A.B. 214.

**A.J. Delap (Las Vegas Metropolitan Police Department):**

We support A.B. 214.

**Bob Roshak (Nevada Sheriffs' and Chiefs' Association):**

We support A.B. 214.

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**Chair Brower:**

We will close the hearing on A.B. 214 and adjourn the meeting at 4:52 p.m.

RESPECTFULLY SUBMITTED:

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Cassandra Grieve,  
Committee Secretary

APPROVED BY:

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Senator Greg Brower, Chair

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

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	2		Agenda
	B	10		Attendance Roster
A.B. 50	C	14	Patrick Guinan	Work Session Document
A.B. 67	D	2	Patrick Guinan	Work Session Document
A.B. 225	E	4	Patrick Guinan	Work Session Document
A.B. 47	F	1	Patrick Guinan	Work Session Document
A.B. 183	G	1	Patrick Guinan	Work Session Document
A.B. 195	H	1	Patrick Guinan	Work Session Document
A.B. 212	I	1	Patrick Guinan	Work Session Document
A.B. 193	J	1	Patrick Guinan	Work Session Document
A.B. 267	K	7	Kristina Wildeveld	Testimony in Support
A.B. 267	L	4	Bridget Walsh	Testimony in Support
A.B. 214	M	2	Assemblyman Michael C. Sprinkle	Proposed Amendment